



# **REVIEW OF THE GOVERNANCE STRUCTURE OVER THE VIRGINIA RAILWAY EXPRESS**

**SEPTEMBER 2013**

The Virginia Railway Express (VRE) provides commuter rail service from the Northern Virginia suburbs to Alexandria, Crystal City and downtown Washington, D.C., helping to reduce traffic congestion in the region. It has grown substantially since its creation 20 years ago. VRE, as a joint venture of the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, has no legal status of its own. Its assets are owned by the two commissions which created it. It, nor the VRE Operations Board governing it, can take any major action without their approval. The formation of this entity in this manner has created a unique governance structure.

Our office and the Office of the State Inspector General received a letter from the Governor this past fall requesting that we coordinate a review of the governance over VRE. Specific questions were raised regarding the legal construct of VRE as well as the oversight provided by the current structure. While VRE's multi-faceted governance structure provides the opportunity for multiple points of oversight, the structure also blurs the line of responsibility for the organization, potentially impacting the efficiency and effectiveness of VRE's operations. As a result of this review, the following key points regarding VRE's governance were identified in this report for consideration:

- VRE may benefit from being removed from under the Commissions' control to become its own legal entity.
- Funding, oversight and voting authority have changed over time. As VRE moves forward it should continue to ensure through its board membership and voting structure that a voice is given to all entities supporting its operations.
- VRE's outdated Strategic Plan should be updated to better address the risks and opportunities present in today's operational environment.
- Further, those entities charged with governance over VRE should:
  - Review and update their by-laws and other forming documents to ensure they fully address the roles and responsibilities to be addressed by their respective boards.
  - Take a greater role in guiding and approving policy formation for VRE to ensure the proper tone regarding internal control is set from the top down.
  - Develop a comprehensive board member education program to ensure board responsibilities are understood and performed.
  - Establish a policy over the process for selecting a Chief Executive Officer (CEO).
  - Establish a policy for evaluating the CEO to ensure expectations for performance are clearly communicated as well as regularly and formally assessed.
  - Evaluate supplementing their oversight and monitoring activities with additional auditing functions either through the creation of an internal audit department or contracting for performance audits of the organization as defined by generally accepted government auditing standards.

# TABLE OF CONTENTS

	<u>Pages</u>
EXECUTIVE SUMMARY	
OVERVIEW	1
Introduction	1
Approach to Review	1
SECTION 1: Understanding Governance Best Practices	2-6
Policy Formulation	2-3
Decision Making	3
Oversight	4
Oversight Structures	4-5
Independence and Relevant Expertise	5
Authority and Responsibilities	6
SECTION 2: Organizational Background	7-13
The Transportation Commissions	7-8
Funding the VRE	8-9
Oversight	10-12
Authority and Responsibilities	12-13
VRE Organizational Structure	13
SECTION 3: Significant Observations	14-23
VRE's Governance Structure is Complex	14-16
VRE's Strategic Plan is Outmoded	16-18
Opportunities for Enhanced Oversight Exist	18-20
Board Education Regarding Roles and Responsibilities is Limited	20
CEO Selection and Performance Oversight is Weak	21
Opportunities for Enhanced Auditing Activities Exist	21-22
SECTION 4: Key Points for Consideration	23-24
TRANSMITTAL LETTER	25
OFFICIAL RESPONSES TO REVIEW	26-30

## TABLE OF CONTENTS

### OFFICIALS

Northern Virginia Transportation Commission	31
Potomac and Rappahannock Transportation Commission	32
Virginia Railway Express Operations Board	33
Department of Rail and Public Transportation	34

### APPENDICES

Appendix A – Supporting Documentation and Interviewees	35-42
Appendix B – Governance Best Practice Checklist	43-52
Appendix C – VRE Organizational Chart	53

## Introduction

The Virginia Railway Express (VRE) provides a commuter rail service from the Northern Virginia suburbs to Alexandria, Crystal City and downtown Washington, D.C., along the I-66 and I-95 corridors, helping to reduce traffic congestion in the region. It has grown substantially since its creation 20 years ago. Our office and the Office of the State Inspector General received a letter from the Governor this past fall requesting that we coordinate a review of the governance over VRE. Specific questions were raised regarding the legal construct of VRE as well as the oversight provided by the current board structure.

VRE, as a joint venture of the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, has no legal status of its own. Its assets are owned by the two commissions which created it and it, nor the VRE Operations Board governing it, can take any major action without their approval. The formation of this entity in this manner has created a unique governance structure. While the structure provides for multiple points of oversight, the multi-faceted structure also blurs the line of responsibility for the organization as will be discussed later in the report

## Our Approach to the Review

Working with the Office of the State Inspector General, we gained an understanding of the history and current governance structure supporting the VRE by reviewing the relevant organization's websites, organizing documents, board minutes, policies and procedures, financial reports, and the Code of Virginia. We also conducted interviews of selected members from each of the boards providing governance over VRE. A comprehensive listing of the documents reviewed, code citations considered, and individuals interviewed is included in Appendix A.

To appreciate the authority and responsibilities typically assigned through an organization's governance structure, we reviewed the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Enterprise Risk Management – Integrated Framework. We selected this framework as the foundation for considering governance best practices because of the business-like nature of VRE's operations.

However, given that the entity is supported predominantly by public funds, either at the local, state, or federal level, we also considered the Code of Virginia classification of authority for collegial and executive branch boards, commissions, and councils. This information was then compared against VRE's existing processes at the time of the review to identify potential areas for enhancements in its governance.

Our report is divided into four sections. The first describes governance best practices for any organization who reports to a board of directors. The second section provides a brief description of VRE and its current structure. The third highlights our observations regarding the VRE in relation to governance best practices. The final section summarizes key points of consideration for the Governor, General Assembly and those charged with governance over VRE.

## SECTION 1: Understanding Governance Best Practices

As explained above, we looked to the COSO Enterprise Risk Management – Integrated Framework to provide the foundation for governance best practices against which to evaluate VRE and its governance structure. This section of the report highlights those best practice concepts as presented within the Integrated Framework which led to the creation of the best practice checklist found at Appendix B. The conclusions reached regarding VRE’s performance against these best practices will be discussed in greater detail in Section 3 of this report.

One cannot talk about governance without considering the control environment surrounding an organization. An organization’s control environment is the set of standards, processes, and structures that provide the basis for carrying out internal controls across an organization. The board of directors and senior management for an organization are responsible for establishing the tone at the top regarding the importance of internal control, including expected standards of conduct. Management reinforces expectations at the various levels of the organization.

### **The control environment comprises:**

- *the integrity and ethical values of the organization;*
- *the parameters enabling the board of directors to carry out its governance responsibilities;*
- *the organizational structure and assignment of authority and responsibility;*
- *the process for attracting, developing, and retaining competent individuals; and,*
- *the rigor around performance measures, incentives, and rewards to drive accountability for performance.*

The resulting control environment has a pervasive impact on the overall system of internal control, the organization’s perception of the importance of internal controls and the policies and procedures that support them, and ultimately the effectiveness of the board of directors in performing its governance responsibilities.

The board of directors serves as the legal guardians of an organization and is responsible to the organization’s stakeholders. Board authority and governance responsibilities can be separated into three broad categories—policy formulation, decision making, and oversight. These responsibilities can be further affected by the structure, independence, and expertise of the board.

### **Policy Formulation**

Policy formulation is the primary tool used to influence an organization. Board policies provide guidelines, a framework for the board’s decision making, and a means to delegate the Board’s authority, while communicating their expectations to management.

## SECTION 1: Understanding Governance Best Practices

A major component of policy formation is the organization's strategic plan. Boards should help to formulate the entity's strategic plan to direct an organization to achieve its mission, objectives and goals. While this provides long range guidance to senior management, the board can provide more immediate feedback and direction through the review and approval of the organization's operating plan. The operating plan allows the board to observe senior management's short-term plan for achieving the organization's long-term goals.

*Board policies provide guidelines, a framework for the board's decision making, and a means to delegate the Board's authority, while communicating their expectations to management.*

Boards should also develop policies regarding financial controls, reporting, and auditing. Financial policies clarify the roles, authority, and responsibilities for financial management activities and decisions. Boards use these in determining the types of financial activities to carry out. Without financial policies boards members may operate under a set of assumptions which may not be shared by all, be accurate or be productive.

As the board delegates the day to day to operation to the chief executive officer, policies must be set by the board to properly select the chief executive officer and to evaluate their performance. Performance evaluation is typically driven by a review of their execution of set responsibilities given to them as well as the successful performance of the organization.

Other best practices policies include board member selection, expectations, formation, and evaluation. All these best practices for policy formulation are intended to provide guidelines for board decision making and communicate their expectations to management.

### Decision Making

Decision making is driven by the policies formulated by the board, involves enforcing those policies to achieve the entity's mission and goals, and is done collectively by the board members. Best practices surrounding decision making involve ensuring the strategic plan, operating plan, and budget are approved by the board. Review and approval of these types of guiding decision documents informs the board of the direction of the organization, and ensures these documents support the board's vision for the organization.

Funding decisions, financial statements, audits, and management policies regarding legal, regulatory, or other external issues should be approved by the board. These types of decisions will protect the financial health of the organization and help to accomplish the board's mission.

Key to supporting the realization of the long and short-term goals for the organization is the board's selection and hiring of a chief executive officer. Boards should be responsible for all aspects of the selection of the individual filling this role, determining their compensation package and performance indicators, as this position normally reports directly to board. Once hired the chief executive officer is responsible for carrying out the day to day organizational operations and adhering to the board approved strategic plan.

### Oversight

The oversight role of a board ensures that management and the board are held accountable for fulfilling the mission of the entity. This role involves monitoring and evaluating both management and entity performance and taking corrective action when needed. In order for a board to carry out the oversight function, the proper knowledge and expertise is necessary from each board member.

Boards must ensure compliance with policies through audits of operations and then through the review and approval of the corrective action taken by management. Reviewing and appraising the performance of the board or board subcommittee as well as the chief executive officer is a best practice to ensure the entity is moving in the proper strategic and operational direction.

Monitoring revenues, expenses, and cash to ensure compliance with the financial policies allows the board to ensure that resources are used for legitimate purposes and available to meet long-term goals. Boards should require significant risks to the entity's strategy and objectives be identified and appropriate responses to those risks be developed. As those responses are implemented the board should evaluate the effectiveness of management's response.

Each of these oversight functions requires the measurement and evaluation of performance over time. Where determined necessary they also dictate taking corrective action to address areas of non-performance or under-performance.

### Oversight Structures

Depending on the jurisdiction, oversight structures are developed voluntarily or as mandated by law, regulation, or standards. In this instance, the Code of Virginia mandates the size and representation for each Transportation Commission. The Commissions have determined the size and representation for the VRE Operations Board.

Based on best practice, smaller organizations may require less extensive governance structures, while larger organizations may need committees at the board level to focus on specialized topics such as:

- *Nominating/governance*, to lead the selection of directors and oversee the evaluation of senior management and the board of directors.
- *Compensation*, to oversee policies and practices for senior management compensation, motivating expected behaviors, balancing incentives for short and long-term performance, linking performance to strategic objectives and relating compensation to risk.
- *Audit*, to oversee management's integrity and transparency in external reporting and overall reliability of financial reports.

*The Code of Virginia mandates the size and representation for each Transportation Commission.*

*The Commissions have determined the size and representation for the VRE Operations Board.*



## SECTION 1: Understanding Governance Best Practices

- Other areas dedicated to address specific matters that are critical to the individual organization's objectives (i.e. compliance committees).

While the board of directors retains oversight responsibility, the chief executive officer and senior management bear direct responsibility for developing and implementing the actual internal control system. Depending on the type of organization and its strategy, structure, and objectives, operating units may have more or less autonomy in making decisions, designing controls, and evaluating performance.

For example, while one organization may implement an enterprise resource planning system that standardizes all major processes and controls, another organization may leave it to each division to determine and implement those processes and controls most suitable to its business activities. Size and de-centralized management structures play key roles in how much autonomy is allowed.

### Independence and Relevant Expertise

The board of directors should demonstrate independence of management and relevant skills and expertise in carrying out its oversight responsibilities. Independence requires there be no personal or professional relationship with or allegiance to the organization in order to allow for an unbiased and impartial mindset. Because the board must be prepared to question and scrutinize management's activities, present alternative views, and have the courage to act in the face of obvious wrongdoing, it is necessary that the board contain outside directors.

Ideally the board of directors includes members that collectively represent the requisite skills and expertise to support the organization, with sufficient overlap to enable discussion and deliberation.

#### Skills and expertise are typically expected to include:

- *leadership and strategic thinking (i.e. ability to make informed decisions in the interest of the entity, considering multiple stakeholders)*
- *financial expertise, including financial reporting*
- *legal and regulatory expertise (i.e. understanding governing laws, rules and standards)*
- *ethical standards*
- *market and company knowledge*
- *problem solving and investigation*
- *incentives and compensation (i.e. knowledge of market compensation rates and practices), and*
- *relevant systems and technology*

## **Authority and Responsibilities**

The board of directors delegates authority and defines and assigns responsibility for senior management. In turn, senior management delegates authority and defines and assigns responsibility at the overall entity and its subunits. Authority and responsibility are delegated based on demonstrated competence, and roles are defined based on who is responsible, accountable, consulted, or kept informed of decisions.

The board and/or senior management define the degree to which individuals and teams are authorized and encouraged, or limited, to pursue achievement of organizational objectives or address issues as they arise. Key roles and responsibilities are assigned across all levels of the organization and the governance structure typically includes the following:

- The *board of directors* who stays informed and challenges senior management as necessary to provide guidance on significant decisions.
- *Senior management*, which includes the chief executive officer and senior management team, who are ultimately responsible to the board of directors and other stakeholders for establishing directives, guidance, and control to enable management and other personnel to understand and carry out their responsibilities.
- *Management*, which includes supervisors and decision makers, who executes senior management directives at the entity and its subunits.
- *Personnel*, which includes all employees who are expected to understand the entity's standards of conduct, objectives as defined in relation to their area of responsibility, assessed risk to those objectives, related control activities at their respective levels of the entity, information and communication flow, and any monitoring activities relevant to achieving objectives.
- The organization provides personnel with direct responsibility over outsourced processes conducted by *service providers*. Outsourced service providers are provided with clear and concise contractual terms related to the entity's objectives and expectations of conduct and performance, competence levels, expected information, and communication flow. They may execute business processes on behalf of or together with management, who remains responsible for internal control.

Organizations delegate authority and responsibility to enable management and other personnel to make decisions according to management's directives toward the achievement of entity's objectives. Delegation of authority provides for greater agility, but it also increases the complexity of risks to be managed.

## SECTION 2: Organizational Background

When evaluating the governance structure supporting VRE, one must appreciate the history and growth of the organization, as well as how it is structured today. The VRE was created as a joint venture of the Northern Virginia Transportation Commission (NVTC) and the Potomac and Rappahannock

Transportation Commission (PRTC), to provide commuter rail service on two railroad lines originating in Fredericksburg and Manassas, Virginia, and terminating at Union Station, Washington, D.C. VRE began running its service in 1992 with 16 trains and an average daily ridership of 1,800. Today, VRE has grown to operate 32 trains with an average daily ridership of over 19,000.

NVTC and PRTC created the VRE joint venture in 1989 through the Master Agreement for the Provision of Commuter Rail Services in Northern Virginia – Establishment of the Virginia Railway Express (Master Agreement) between the two Commissions and the member jurisdictions that agreed to support the VRE through an annual subsidy. The stated mission of VRE is to “...provide safe, cost effective, accessible, reliable, convenient, and comfortable commuter-oriented rail passenger service.... (and) ...contribute to the economic development of its member jurisdictions as an integral part of a balanced, intermodal regional transportation system.” The Commissions own the VRE and provide a structure for its management through the Master Agreement. To appreciate this structure, it is helpful to understand the organizations that created the VRE.

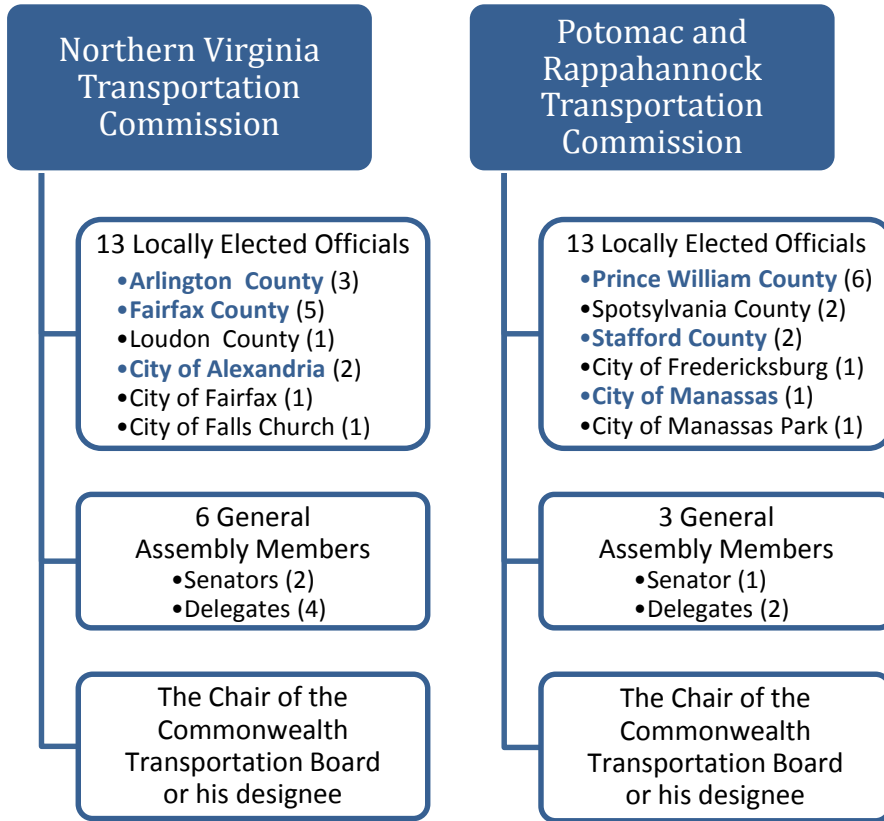


### The Transportation Commissions

NVTC and PRTC represent transportation districts established by the Code of Virginia, with responsibility for long-range transportation planning for and operation of regional transportation projects. They support this goal by developing regional transportation policies and procedures, guided by performance-based criteria such as the ability to improve travel times, reduce delays, connect regional activity centers, improve safety, improve air quality, and move the most people in the most cost-effective manner.

NVTC was created by the 1964 Acts of Assembly of the Commonwealth of Virginia, Chapter 630, to support the Northern Virginia Transportation District, which originally included the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington and Fairfax. Loudoun County joined the Northern Virginia Transportation District and; therefore, the NVTC in 1990. Collectively these localities are referred to as “member jurisdictions.” NVTC is the governing body of the district, and was created pursuant to the authorizing legislation to manage and control the functions, affairs, and property of the district.

### Transportation Commission Membership



\*Jurisdictions highlighted in blue were part of the original 1989 Master Agreement creating VRE. Additional jurisdictions joined the Master Agreement later, as discussed below.

by its member jurisdictions. Seventeen commissioners comprise the PRTC Board of Directors, with thirteen locally elected officials from its six member jurisdictions; three members from the General Assembly (one senator and two delegates); and the Chairman of the Commonwealth Transportation Board or his designee, currently from the Department of Rail and Public Transportation.

### Funding the VRE

While the 1989 Master Agreement creating VRE defined it as a joint venture of both commissions, only six of the respective member jurisdictions at that time agreed to provide financial support for its operations, specifically, the cities of Alexandria and Manassas; and the counties of Arlington, Fairfax, Prince William and Stafford. Arlington County and the city of Alexandria were classified in the agreement as **contributing jurisdictions**, while Fairfax, Prince William, and Stafford Counties and the city of Manassas were identified as **participating jurisdictions**. In 2009 the cities of Fredericksburg and Manassas Park, joined the Master Agreement to help fund the VRE as participating jurisdictions. Spotsylvania County joined as a participating jurisdiction in 2010.

Per §15.2-4507 of the Code of Virginia, the NVTC Board of Directors consists of 20 commissioners. Thirteen are locally elected officials from its six member jurisdictions. Six of the commissioners are appointed from the General Assembly (two senators and four delegates). The Secretary of Transportation as the Chairman of the Commonwealth Transportation Board, or his designee, holds the remaining position.

PRTC, when created in June 1986, included the counties of Prince William, and Stafford, and the city of Manassas. The cities of Fredericksburg and Manassas Park joined in 1992. Spotsylvania County joined PRTC in 2010. Like NVTC, PRTC exists to serve as the governing body of the transportation district created

## SECTION 2: Organizational Background

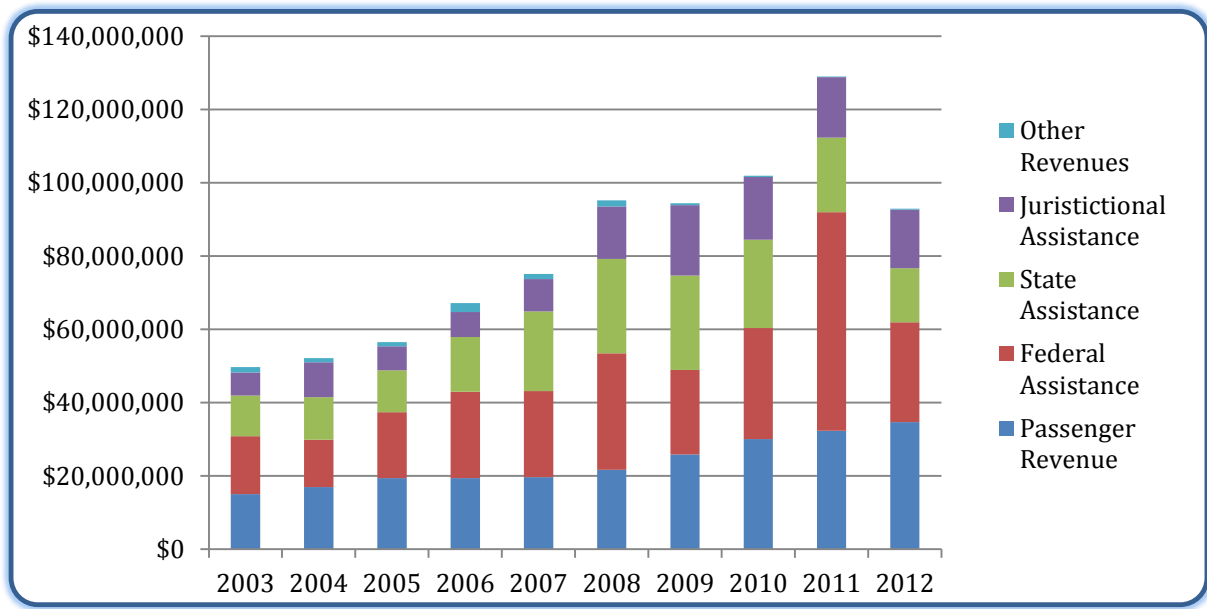
When developing the Master Agreement the commissions acknowledged the **contributing jurisdictions** would have minimal VRE ridership originating from their jurisdiction due to their proximity to Washington, D.C, and the availability of the Washington Metropolitan Area Transit Authority (WMATA) Metro system to their citizens. They would, however, benefit from being a destination for many VRE riders from other jurisdictions, greater regional connectivity, and reduced traffic and congestion within their jurisdictions. Based on the 1989 Master Agreement, contributing jurisdictions accordingly did not share in all VRE costs, but contributed towards VRE at a fixed, amount, subject to an annual escalator.

Conversely, the Commissions recognized that the **participating jurisdictions** would receive greater benefit from VRE through increased employment opportunities for their residents, greater regional connectivity, and reduced traffic and congestion on the I-66 and I-95 corridors, and; therefore, should provide more funding to its operations. Participating jurisdiction funding is formula driven and was designed to be dynamic, fluctuating to address shortfalls from the other available revenue sources supporting VRE operations.

Originally, ten percent of the shortfall was apportioned among the participating jurisdictions by population and the remaining 90 percent was apportioned among the participating jurisdictions by VRE ridership. In 2007 the 1989 Master Agreement was modified to gradually phase out the ten percent population apportionment and move to a 100 percent VRE ridership apportionment by fiscal year 2011.

As reflected in the table below, VRE's revenue sources predominantly come from passenger fares, federal and state subsidies, and grants. Jurisdictional assistance is the fourth largest funding source.

**VRE Revenue Sources over the Past 10 Years**

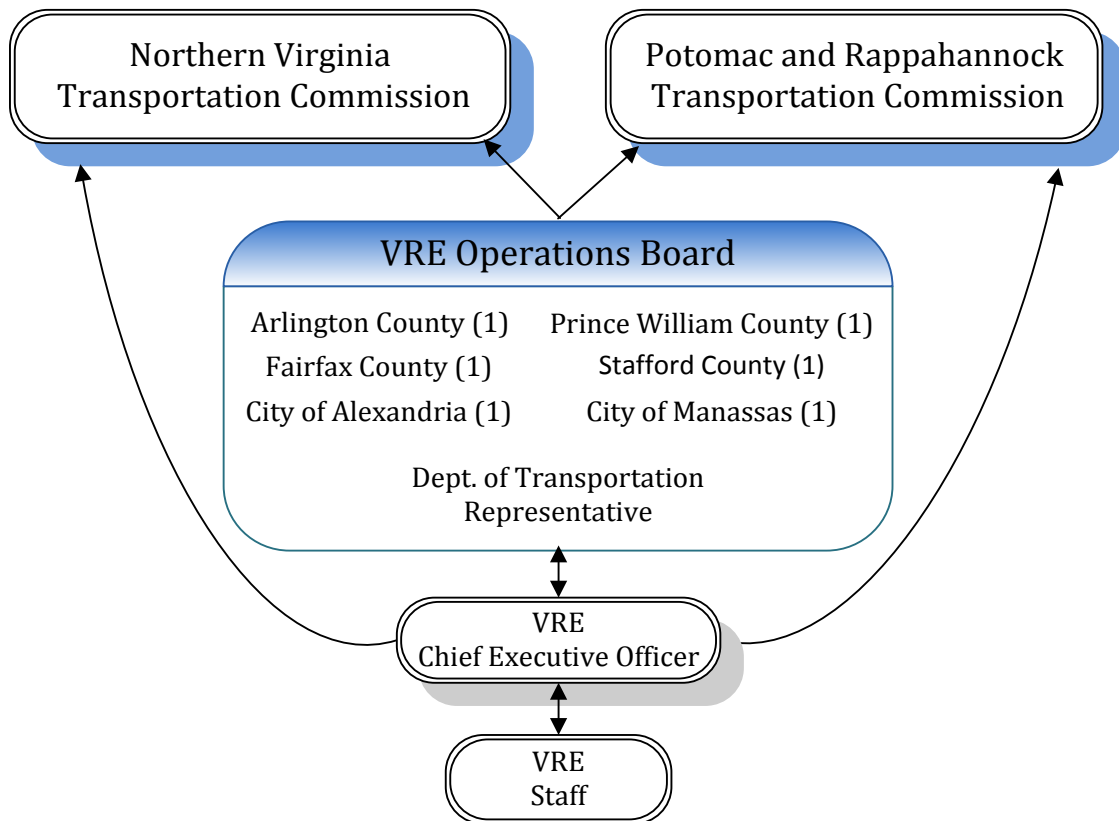


## Oversight

While the Commissions technically have ultimate responsibility for VRE, over time much of their oversight responsibilities have been delegated to the VRE Operations Board. The VRE Operations Board reports to both Commissions as a sub-committee and advisory body. It oversees the management, operation, and control of operational decisions, functions, affairs, and property of VRE on behalf of the Commissions, exercising such powers and authority delegated to it by the Commissions through the Master Agreement. All decisions of the VRE Operations Board are subject to review and potential reversal by the Commissions.

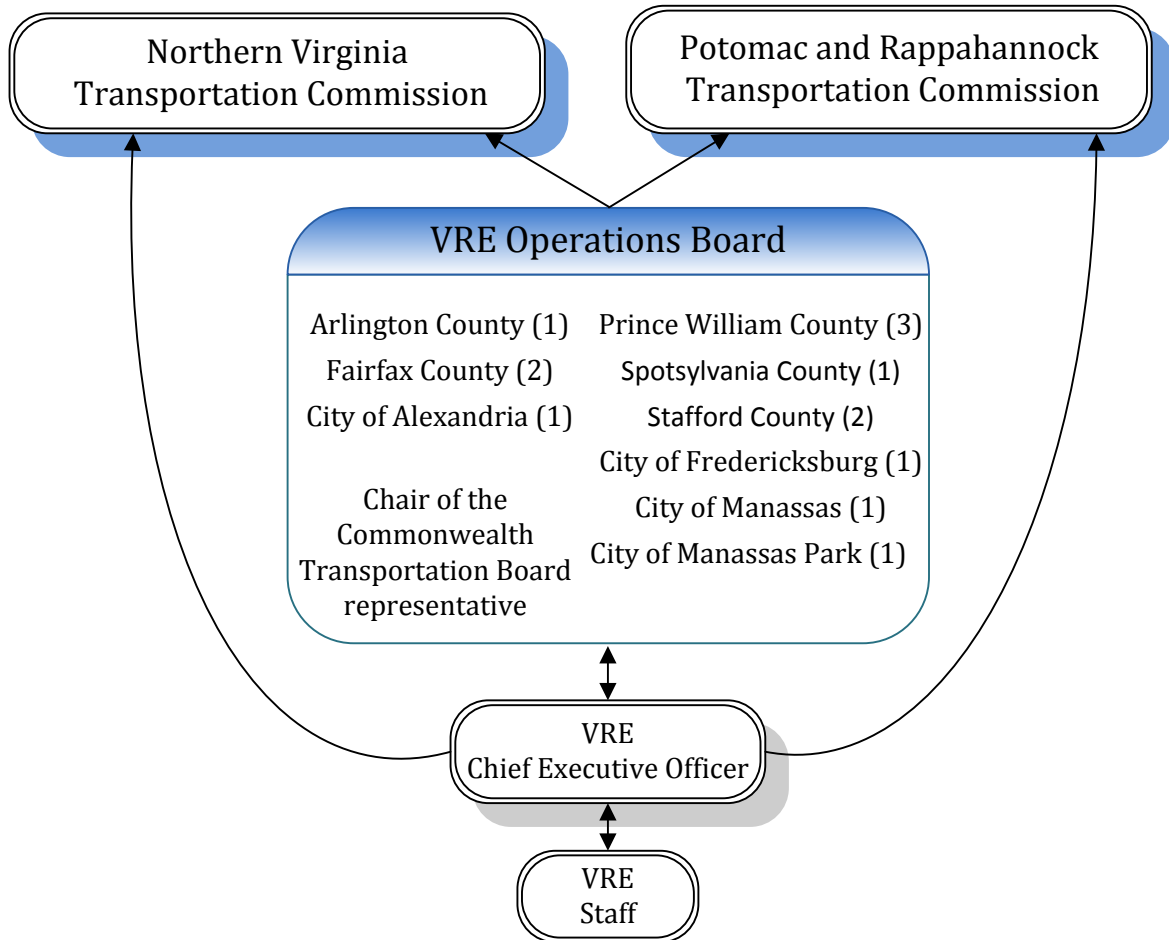
When originally established, the VRE Operations Board consisted of seven members: three commissioners from NVTC, three commissioners from PRTC, and an ex officio representative of the Virginia Department of Transportation (VDOT). Each member of the VRE Operations Board received one vote under this structure.

### Original VRE Operations Board Membership



In 2007, the Commissions amended the Master Agreement to provide each contributing or participating jurisdiction representation on the VRE Operations Board. Each **contributing jurisdiction** was given one position. Each **participating jurisdiction** was given one, two or three positions proportionate to the VRE ridership from their jurisdiction based on the ranges set forth in the Master Agreement. The Department of Transportation representative was replaced with the Chairman of the Commonwealth Transportation Board (CTB), or his designee.

**Current VRE Operations Board Membership**



The diagram above reflects the VRE Operations Board's current membership. The three jurisdictions listed on the left of the VRE Operations Board are the NVTC representatives. The six jurisdictions listed on the right are the PRTC representatives. Currently, a Department of Rail and Public Transportation representative serves as the Chair of the Commonwealth Transportation Board designee, with limited voting rights. During the 2013 session, the General Assembly passed House Bill 2152, which gives the Chair of the Commonwealth Transportation Board representative full voting rights on the VRE Operations Board effective July 1, 2014.

Although restructured from a membership perspective, the VRE Operations Board remains a sub-committee of the Commissions. Only elected officials from the jurisdictions that sit on the individual Commissions are allowed to be members of the VRE Operations Board. The specific authority and responsibilities of the VRE Operations Board is discussed in the next section.

Per the Master Agreement, the VRE Chief Executive Officer reports directly to, and shall act at the direction of the VRE Operations Board, to the extent authorized by the Master Agreement or delegated by the Commissions. Therefore, depending on the significance and nature of an item



requiring board action, the Chief Executive Officer may seek approval solely from the VRE Operations Board or from the VRE Operations Board and the Commissions. To the extent directed by the Operations Board and authorized by the Commissions, the VRE Chief Executive Officer then directs the VRE professional staff in the day-to-day operation of the VRE.

### Authority and Responsibilities

When VRE was created the Commissions were directly involved in the oversight of its operations, serving as the primary and only approval point for key actions by the organization, such as approving the strategic plan, operating plan, and budget. As VRE's performance improved, the level of oversight being performed became increasingly burdensome as the Commissions acted on any transactional item greater than \$200,000. Due to the nature of VRE's operations, much of their activity exceeds this threshold.

In 2005, the Commissions approved a three-phased plan to delegate authority to the VRE Operations Board with a final implementation date of July 1, 2008. The purpose was to extract the Commissions from the more routine aspects of day-to-day VRE operations and allow them to focus on higher level strategic and operational items. Once fully implemented, the Commissions retained responsibility for approving the following:

- amendments to the 1989 Master Agreement, including terms for new entrants,
- hiring and termination of the VRE Chief Executive Officer,
- state and federal grant applications,
- legislative agendas,
- the strategic plan, six-year financial plan, and annual budget,
- sale and/or purchase of real property and equipment for VRE's benefit, held in the applicable Commission's name,
- contractual agreements, such as operating access, operating, or insurance; and
- any matter not expressly delegated to the VRE Operations Board or the VRE CEO.

Further, the Commissions are forwarded information on the VRE Operations Board monthly meeting agenda for review and can request the VRE Operations Board to forward any item included therein for their consideration.

Currently, the Commissions have delegated the VRE Operations Board the following authority:

- full authority on spending decisions and actions, if the amount has been included in the annual budget or six-year financial plan, and
- approval of fare changes, if consistent with the annual budget and six-year financial plan.



Further, the Commissions and VRE Operations Board have delegated the VRE Chief Executive Officer the following authority:

- administration of all day-to-day functions and affairs of VRE,
- preparation and provision of monthly reports to the VRE Operations Board and Commissions, regarding administration and operation of VRE, and necessary board actions,
- execution of annual budgets, including transactional authority for items less than \$50,000, and
- day-to-day operational decisions necessary to ensure continuous VRE services, including those required in the event of an emergency.

The delegation of these authorities is subject to the Commissions' oversight and may be expanded, modified, or revoked as the Commissions deem appropriate.

### **VRE Organizational Structure**

Below the VRE Chief Executive Officer, there are five key areas of operation: Finance, Rail Operations, Administration, Rail Equipment and Services, and Engineering and Construction. Thirty-five individuals, including the chief executive officer, are employed to execute these functions. Appendix C reflects the organizational structure at June 30, 2012.

Adding to the complexity of VRE operations, the VRE staff are actually employees of the PRTC. Their employment is structured in this manner to take advantage of the existing payroll functions as well as employment benefits in place at PRTC and minimize operational costs to the VRE.

As a joint venture, the Commissions serve as VRE's agent to obtain state and federal funds. The Commissions, rather than VRE, actually commit to fulfill the compliance requirements attached to these funds, and; therefore, have created the majority of the policies and procedures that are used to provide internal control and ensure compliance. VRE has adopted some policies that are explicit to their operations, but the majority are predefined for them by the Commissions.

Based on our understanding of governance best practices, a questionnaire was developed to assess the quality of the governance structure over VRE and its operations. That questionnaire and the specific responses to it can be found in Appendix B. During the completion of that questionnaire, the following observations were noted. As they are highly interrelated, a summary of items for consideration as a result of the observations is provided in Section 4.

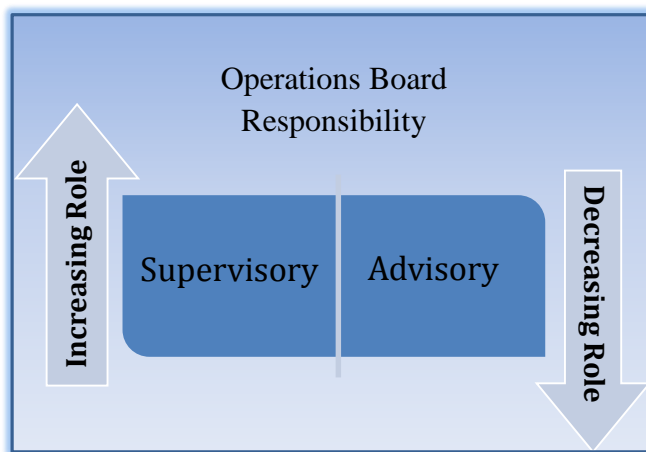
### VRE's Governance Structure is Complex

#### *The Level of Responsibility has Shifted Over Time*

While the Commissions are responsible for other transit operations, VRE has grown to be largest single component under their purview. To avoid the need for three separate actions on routine matters, the Commissions have delegated more and more of the day to day operational responsibilities for VRE to the VRE Operations Board.

Per the Code of Virginia, an advisory board provides advice and comments to an executive office, or in VRE's case, the Commissions' Boards. An advisory board serves as a formal liaison between the agency or office and the public to ensure that the agency or office understands and communicates the public's concerns. This type of board does not serve a regulatory or rule making purpose, although, it may participate in the development of policy by providing comment and advice. On the other hand, a supervisory board is responsible for the agency operations including approval of requests for funding. This type of board appoints the agency director or CEO and ensures the CEO complies with all board and statutory directives.

So where the VRE Operations Board was originally created as a joint subcommittee of the Commissions, with powers typical of an advisory board, today it spends more time operating like a



supervisory board over the VRE. Only the most significant items which affect leadership, impact the availability of revenues, or create financial commitments above the VRE Operations Board delegated authority are raised to the level of the Commissions. Consequently, due to the increased delegations, there are three separate boards operating as or like a supervisory board to which the VRE Chief Executive Officer answers: NVTC, PRTC and the VRE Operations Board, beginning with the VRE Operations Board.

The types of decisions that run through the VRE Operations Board include accepting the financial statement audit, reviewing the budget, awarding contracts, accepting the Six-year Transit Development Plan, authorizing fare modifications, and approving certain policies or policy changes. Once the VRE Operations Board accepts or approves a resolution at its board meeting, resolutions are recommended to the Commissions' Boards for action as required by the Master Agreement. This

structure is intended to ensure the localities benefiting from and impacted by the VRE's existence are aware of VRE's operational initiatives and how they may impact the regional planning of the respective Commissions.

As a result of this structure, policies, procedures, procurements, budgets, and CEO approvals can go through many layers of approval. For instance a new procurement policy can be initiated from the VRE staff level, brought by the CEO to the VRE Operations Board for approval and then sent to Commissions' Boards for their approval. This is viewed as an additional check and balance to the VRE Operations Board oversight.

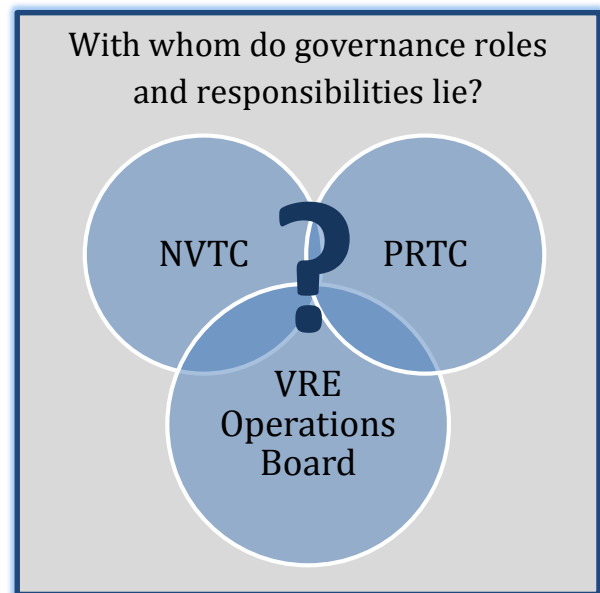
However, it can be argued that this process adds limited value, as VRE Operations Board members are also members of the Commissions and the remaining Commission members look to the VRE Operations Board members as experts since they are more involved with the decision-making for VRE. Additionally, NVTC has jurisdictional members on their Commission with more limited interest in VRE as they do not participate in this joint venture. An overwhelming majority of the time Commission members vote in line with the recommendation of the VRE Operations Board.

### *Board Roles and Responsibilities are not Clearly Defined*

Of additional concern, expectations regarding board authority and responsibilities are only loosely defined within the Master Agreement, creating a great level of disparity between the perceived responsibilities, defined responsibilities, and governance best practices. For example, it is unclear which policies and procedures must go before the Commissions' Boards for approval and which ones may stop at the VRE Operations Board. Nor is there a clear understanding or expectation by the VRE Operations Board members regarding which organizational policies and procedures they should be approving in the first place.

In the interim, based on interviews, if there is any question on whether an item should go before the Commissions, the VRE Operations Board errs on the side of caution and sends the item to the Commissions for approval. Any formal action items are voted on by the Commissions. Other items approved by the VRE Operations Board not requiring Commission action are presented as informational items, for Commission consideration as they deem necessary.

Confusion in appreciating board member responsibilities is not unexpected as the membership of both the Commissions and the VRE Operations Boards can shift from year to year as the elected officials representing the member jurisdictions move in and out of office and roll on and off the Commissions. Those with less experience rely heavily on those with more experience to provide them with direction and help define their performance expectations as a board member.



This highlights a need for board member education which will be discussed later in the report; in addition, it reflects the need for enhancements to the Commissions and VRE Operations Board by-laws and other forming documents, such as the Master Agreement, to more clearly define these roles.

### *VRE Operations Board Membership and Voting Power are not Equal*

As noted in Section 2: Organizational Background, elected officials from the jurisdictions that sit on the individual Commissions are members of the VRE Operations Board. The number of seats a particular jurisdiction holds is proportionate to their ridership based on the ranges set forth in the Master Agreement. In addition, the membership structure includes a state representative. Membership on the VRE Operations Board provides these localities with visibility over VRE's performance and input into higher level policy discussions for the organization.

The VRE Operations Board generally operates by consensus. However, when a formal vote must occur to take action on a contentious issue, each jurisdiction on the VRE Operations Board receives a weighted vote, proportionate to its annual subsidy of VRE.

Where the jurisdiction holds more than one seat, this weighted vote is allocated out evenly across the number of seats held. In other words, if Prince William's jurisdictional contribution represents 27 percent of the total subsidy for all jurisdictions and they have three members on the VRE Operations Board, then each Prince William member's vote would carry a nine percent weight. A majority exists when no less than 60 percent of the annual subsidies for all jurisdictions vote in one direction on an issue, be it in favor or against. It should be noted that per the Master Agreement a weight is not allocated to the state's representative, and; therefore, in these instances the state has no vote. Their opinion can only be verbally expressed and considered by the other VRE Operations Board members when they place their vote.

Both the state and federal government's contributions to VRE's operations have at times significantly exceeded those of the individual jurisdictions as well as the jurisdictions as a whole. Because of the significance of state contributions, during the 2013 session, the General Assembly passed House Bill 2152, which gives the Chairman of the Commonwealth Transportation Board or his designee equal voting weight on the VRE Operations Board to that of the jurisdiction to with the largest weight based on funding provided the Commonwealth's funding in that year is at least equal to that of largest funding jurisdiction. However, the requirement for this voting structure will not be in effect until July 1, 2014, and will require board action to put into place.

### **VRE's Strategic Plan is Outmoded**

As discussed in Section 1, a strategic plan serves as the guiding force behind an organization's actions; it helps to direct resources and decision making at all levels. In 2001, the Commissions authorized the CEO to prepare a strategic plan focusing on the VRE core network and short-term needs through 2010. The VRE Operations Board then directed a more comprehensive analysis be completed to formulate a long range vision for the railroad through 2025. The resulting strategic plan was formally adopted by the Commissions in May 2004.

A strategic planning retreat to revisit this plan and its continuing applicability took place in July 2011. According to conversations with multiple board members, discussions at the retreat focused on capacity, funding, policies, and future plan and growth scenarios. A summary report of the retreat was compiled detailing the topics discussed and general consensus areas amongst the VRE Operations Board members. However, at the conclusion of the retreat, several discussion items were left outstanding such as:

- determining what and who should VRE serve,
- reviewing and revising the VRE Vision/Mission statement,
- establishing goals to support the revised Vision/Mission Statement, and
- developing priorities for strategic initiatives.

*VRE's May 2004 strategic plan is still in effect, but universally viewed by the interviewees as outdated and stale.*

*They noted VRE has grown exponentially and the plan no longer adds value or provides sufficient direction for the organization.*

A revision of the mission statement was completed in January 2012; however, none of the other outstanding items have been addressed. As a result, the May 2004 strategic plan is still in effect, but universally viewed by the individuals interviewed as outdated and stale.

The existing strategic plan looks for continued growth, but does not provide the goals or objectives necessary to support the realization of that growth. The lack of the guiding vision normally provided through the strategic plan is beginning to lead to stagnation within VRE operations as they struggle to determine where to head next. This is highlighted through the annual update to VRE's six year transit development plan prepared as a requirement of the Virginia Department of Rail and Public Transportation. Rather than defining and supporting the organization's future needs and goals, the plan focuses on sustainability for the year.

Interviewees reiterated that since the 2004 strategic plan was approved, VRE has grown exponentially and the plan no longer adds value or provides sufficient direction for the organization. Further, the plan does not adequately address the more recent emerging risks for VRE, such as

- its significant dependence on revenue sources other than passenger fares, which only covers approximately 50 percent of their operating needs, and the implications of one or more revenue sources decreasing or no longer being provided due to the fluctuating economic conditions; and
- the lack of track space and limited rail infrastructure to facilitate expansion, while current operations are running at near full capacity.

Further, based on their growth and these unmanaged key risks, during the course of our interviews, a theme emerged regarding VRE's future. Specifically, VRE has reached a ceiling with what it can accomplish within the confines of existing (and potentially shrinking) financial resources and the available rail infrastructure, and has a strategic decision to make: whether to continue to

maintain their current level of service or to strive for continued expansion. This strategic decision may drive the need for changes within VRE's organizational and governance structure.

If VRE wants to continue to maintain their current business model, their current structure has proven to perform at a high level of customer satisfaction and timely operation and; therefore, may be appropriate for the future. However, if they want to continue to grow and expand, a new governance structure may be necessary to provide a more responsive means for managing the strategic goals.

This does not mean that the membership of the VRE Operations Board should change or that the need to coordinate with the Commissions would cease. But it may mean that to realize this goal, the requirement for the Commissions' approval should be removed and the ability for the VRE to stand alone as its own legal entity should be allowed. This would ensure that those jurisdictions with a vested interest in VRE's success are governing its policy formation, decision making, and oversight, as opposed to the current structure which includes those with no financial or jurisdictional interest in VRE's success.

### **Opportunities for Enhanced Oversight Exist**

Communication between all levels of management as well as those charged with governance is key to ensure short and long-term organizational performance and effective oversight. In the case of VRE, monitoring and oversight comes through regular monthly reporting to the VRE Operations Board and two weeks later, to the Commissions.

Based on previous guidance provided from the VRE Operations Board, the VRE Chief Executive Officer's monthly presentation discusses emerging issues, provides updates on a limited set of predefined performance indicators, highlights trends in rider citations, and discusses the budget to actual performance of the organization for the year to date. The performance indicators focus on ridership levels, on-time and safety performance of the various lines, and on an annual basis, customer satisfaction.

To perform its oversight, the Commissions receive a similar, but abbreviated update from the CEO or a member of the VRE Operations Board, as well as the VRE Operations Board draft minutes and board packet at their meeting. The Commissions' meetings occur on the same evening, two weeks after the VRE Operations Board meets.

Based on the results of these reported performance indicators, one could conclude VRE's organizational performance is strong and; therefore, the level of oversight is sufficient. VRE has done an exceptional job at increasing ridership, maintaining a high percentage on-time performance (currently averaging around 95 percent), and safe service with an exceptionally high level of customer satisfaction. In fact, based on our interviews, the Commissions and VRE Operations Board, define this as success and sufficient oversight. However, as an entity that receives and predominantly relies on local, state, and federal dollars to fund its operational needs, transparency and stewardship must also be of equal concern.



As previously discussed, best practices support boards demonstrating a greater level of involvement in creating and influencing the tone of the organization regarding the control environment. The limited focus of these governance bodies on the end results does not ensure that the appropriate tone is established regarding the business practices of the organization and their approach to internal control to achieve these results. Greater VRE Operations Board involvement in defining and driving the policies supporting VRE's day-to-day operations in conjunction with enhanced oversight activities would send a stronger message regarding the expectations for internal control, compliance and integrity.

*Greater VRE Operations Board involvement in defining and driving the policies supporting VRE's day-to-day operations would send a stronger message regarding the expectations for internal control, compliance and integrity.*

With more limited oversight focus, lower expectations for ethical behavior within the organization may exist and the board's ability to rely on management's assessment of operational activities and issues should decrease. Stated another way, the level of trust should decline in this scenario. Effective and appropriate levels of oversight of an organization from policy formation through to outcome based analysis would allow for the level of trust to increase and for the various boards to realize greater levels of confidence regarding the organization's ability to perform in accordance with board's expectations.

Adding to the challenges of policy formation, the organizational lines around VRE as an entity are blurred. VRE staff are actually employees of PRTC. VRE cannot independently execute contracts, purchase equipment, issue bonds, or request audits as they are not a legal entity. Contracts must be in the name of one of the commissions. Equipment purchased on behalf of VRE is held by one of the commissions. Bonds for the benefit of VRE are secured through the Commissions. Audit findings regarding the VRE are given to the Commissions and responded to by the Commissions. While separate financial statements are prepared for the VRE they must be apportioned out to the Commissions for presentation in their respective financial statements, as VRE does not own any assets or have liability for any outstanding balances and the Commissions have ultimate responsibility for VRE.

VRE's dependence on the Commissions for these functions and the blurred lines of responsibility has in turn led to a dependence on Commission defined policies and procedures. NVTC has a Financial Policies and Procedure Manual which detail procedures for state grant revenue for VRE. PRTC has Grants Management Guidelines for the handling of VRE's federal grants. VRE has additional policies which provide internal controls to support their financial operations and ensure compliance. However, none of the policies have been presented to or approved by the respective Commissions prior to their implementation.

Based on the best practice principles reflected in the COSO Enterprise Risk Management – Integrated Framework, boards should develop policies regarding financial controls, reporting, and auditing. Financial policies clarify the roles, authority, and responsibilities for financial management activities and decisions. Boards use these in determining the types of financial activities to carry out and communicate the level of control management should exercise over these

areas. Without involvement in financial policy development, a board's members may operate under a set of assumptions which may not be shared by all, accurately reflect their expectations for performance, or be productive in affecting the management of the organization.

### Board Education Regarding Roles and Responsibilities is Limited

Concerns regarding board appreciation for their responsibilities and the alignment of those responsibilities with COSO identified best practices, or lack thereof, have been discussed above. Much of the confusion and potential areas for enhancement could be addressed through the development of a comprehensive board education program which would highlight the nature of VRE's operations, the functions of the board, expectations for performance of board members, and board independence. Such a program does not currently exist.

Each new VRE Operations Board does receive a "Welcome Package" from the CEO in order to familiarize themselves with the VRE. This package includes the Master Agreement, a letter from the CEO, and a listing delegation of powers from the Commission Boards to the VRE Operations Board. The VRE Operations Board Member is given an opportunity to ride the VRE, take an office tour, and meet VRE staff. It is up to each board member to decide to participate in this VRE orientation.

*Due to the minimal new member orientation materials, reliance is placed on senior board members and the VRE Operations Board Counsel for guidance on the extent of board member authority and responsibilities.*

Based on discussions with board members, the orientation does not include any industry specific or governance training, but rather focuses on the services provided to VRE's ridership. Members confirmed that a delegation of authority from the Commissions to the VRE Operations Board was included in the packet; however, they did not believe it to be an all-inclusive list of the VRE Operations Board powers and duties. The board members indicated they relied more on the senior board members and VRE Operations Board counsel for guidance on the extent of their authority and responsibilities.

The effectiveness of such a program could be enhanced by defining expectations for board member performance, as encouraged by best practices. These expectations could set explicitly the level of responsibility placed on the board members for meeting attendance, policy development, operational oversight and monitoring, and subcommittee membership. This would help to more clearly define who was responsible for what aspects of VRE's operations.

However, it should be noted, that as the membership of the Commissions and VRE Operations Board are driven by code mandated appointments, the secondary best practice of evaluating board member performance against these expectations, to affect change in board membership, is not realistic, as the boards have no control over who serves on them. Rather, the expectations defined here would be used to help educate the board member on the organization and the responsibilities they have for supporting the organization's operational success.



## **CEO Selection and Performance Oversight is Weak**

There are no policies regarding the selection of the VRE CEO. The only selection expectation that is defined is the VRE Operations Board responsibility to recommend a candidate for hire and the Commissions' responsibility to approve the hire.

The hiring process was recently completed for the first time in 12 years this past summer when the previous CEO retired. While the board utilized an executive search firm to help with the process, there were no documents in place to guide the selection process or define the knowledge, skills, and abilities desired in a successful candidate. The search firm defined this information on the Board's behalf and then identified individuals for interview.

Based on best practices, the Commissions and/or VRE Operations Board should have had a policy and documentation in place to guide the selection process and the search firm's activities. This would have helped to ensure the Commissions' and/or VRE Operations Board's vision for a successful candidate was clearly defined.

Further, the responsibilities and performance expectations for the CEO are poorly defined, at best. A limited description of the CEO's responsibilities can only be found in the Master Agreement. It lists four key responsibilities, as follows:

- Monthly Reports to the Commissions regarding administration and operation of VRE
- Execution of annual budgets
- Day-to-day operational decisions
- Other duties which may be delegated by the VRE Operations Board and authorized by the Commissions

These items are presented at a very high level with no descriptions or expectations of accountability behind them. The CEO, through the guidance received from the VRE Operations Board, sets the tone at the top that affects the integrity and ethics of the organization and provides the foundation for strong internal controls. In a traditional governance structure, while the CEO runs the day-to-day operations and is responsible for the internal control system, the board to which he reports must hold him accountable for performance. Without more specific expectations and performance indicators defined, it is difficult to evaluate performance and consequently justify adjustments to compensation and benefits.

## **Opportunities for Enhanced Auditing Activities Exist**

Currently auditing activities related to VRE operations are limited to an annual financial statement audit. An audit of federal expenses in accordance with the Office of Management and Budget Circular A-133 is performed for the Commissions, and a triennial review of their federal programs is also performed by the Federal Transit Administration. These audits include those

federal funds used by VRE. VRE does not have its own federal audit because it is not considered a separate legal entity.

The operational benefits gained from these types of audits are more restricted, as the scope of their coverage is limited to financial statement reporting and federal compliance. The amount of coverage over internal controls provided by a financial audit is reflected in the audit opinion as follows: “An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of VRE’s internal control over financial reporting. Accordingly, we express no opinion.” During our interviews, board members appeared to perceive a greater level of assurance in these audits than is actually warranted. Specifically they indicated their reliance on their annual financial statement audit to catch potential internal control and policy issues, when this is not the intent of a financial statement audit.

*The scope and coverage of current auditing activates impacting VRE are limited to financial statement reporting and federal compliance.*

*Board members appear to place a greater level of assurance on these audits than is actually warranted.*

An alternative source of assurance is available. Performance audits as defined by generally accepted government auditing standards provide information to improve program operations and facilitate decision making by parties with responsibility to oversee or initiate corrective action, and improve public accountability. Performance audits can encompass a wide variety of objectives, including objectives related to assessing program effectiveness and results; economy and efficiency; internal control; compliance with legal or other requirements; and objectives related to providing prospective analyses, guidance, or summary information.

Performance audits may entail a broad or narrow scope of work and apply a variety of methodologies; involve various levels of analysis, research, or evaluation; generally provide findings, conclusions, and recommendations; and result in the issuance of a report. Audits performed under these standards have the opportunity to provide the Commissions and VRE Operations Board the broader coverage currently perceived as being provided by VRE’s annual financial statement audit.

Performance audits of governmental activities are typically carried out by external audit bodies. However, performance audits may also be conducted by internal auditors who are employees of the entity being audited. Under best practices, an internal audit function adds to a board’s oversight and monitoring activities and can also provide services to give the types of assurance the Commission and VRE Operations Board members believe they are receiving from their financial statement and federal compliance audits.

VRE does not currently have an internal audit function. Given the limited involvement the board currently plays in the development and approval of VRE’s policies and procedures, they could benefit from an internal audit function or at a minimum, contracting for periodic performance audits under generally accepted government auditing standards.

## SECTION 4: Key Points for Consideration

Based on the observations in Section 3 above, the following key points are offered to the Commissions, VRE Operations Board, Governor and General Assembly for their consideration.

- VRE may benefit from being removed from under the Commissions' control to become its own legal entity. Authorization and approval of board resolutions could be streamlined, decreasing the time for action and improving board responsiveness to VRE's needs. Such a change will likely require legislative action to achieve, may increase operational costs and in the short term impact overall performance, but may also better position the organization strategically in the future.
- Either once the question regarding VRE's oversight structure has been answered or in conjunction with answering it, priority should be placed on updating the Strategic Plan to better address the risks and opportunities present in today's operational environment to ensure the Plan properly supports the policy formulation, decision making and oversight responsibilities of the governing board(s).
- Each organization responsible for governance over VRE should consider reviewing their by-laws and other forming documents to ensure they fully address the roles and responsibilities to be addressed by their respective boards. Where oversights or omissions exist, these documents should be updated and enhanced to clearly define the respective board's responsibilities. Completing such a review and updating the associated documents will aid in transitioning new members onto the boards and ensure they appreciate their responsibility for policy formation, decision making, and oversight.
- Funding, oversight and voting authority have changed over time. As VRE moves forward it should ensure through its board membership and voting structure that a sufficient voice is given to all entities supporting its operations. The current structure ensures the affected localities have a voice and the passage of Chapter 589 of the 2013 Acts of the Assembly, which amended §§ [15.2-4507](#) and [15.2-4512](#) of the [Code of Virginia](#) extends that voice to the Commonwealth.
- The organizations charged with governance over VRE should take a greater role in guiding and approving policy formation for VRE. By leading policy formation, these entities will ensure the proper tone regarding internal control is set from the top down as encouraged by best practices.
- The organizations charged with governance over VRE should develop a comprehensive board member education program to ensure board responsibilities are understood and performed. This education program should include industry specific training, as many members have limited exposure to commuter rail systems, as well as governance training. The effectiveness of such a program could be further enhanced through the implementation of the best practice approach of defining expectations for board member performance.

## SECTION 4: Key Points for Consideration

- The organizations charged with governance over VRE should have a policy and documentation in place to guide the selection process for its CEO. This will help to ensure their vision for a successful candidate is clearly defined.
- The organizations charged with governance over VRE should establish a policy for evaluating the CEO to ensure their expectations for performance are clearly communicated as well as regularly and formally assessed.
- The organizations charged with governance over VRE should evaluate supplementing their oversight and monitoring activities with additional auditing functions either through creating an internal audit department or contracting for performance audits of the organization as defined by generally accepted government auditing standards.



Martha S. Mavredes, CPA  
Auditor of Public Accounts

# Commonwealth of Virginia

*Auditor of Public Accounts*

P.O. Box 1295  
Richmond, Virginia 23218

September 10, 2013

The Honorable Robert F. McDonnell  
Governor of Virginia

The Honorable John M. O'Bannon, III  
Chairman, Joint Legislative Audit  
and Review Commission

In accordance with the Governor's request, we, in conjunction with the Office of the State Inspector General, have completed our review of the Virginia Railway Express and respectfully submit our report entitled, "Review of the Governance Structure over the Virginia Railway Express" for your review.

This report describes the evolution of the Virginia Railway Express and its governance structure. We verified the accuracy of this information with the Northern Virginia Transportation Commission, Potomac and Rappahannock Transportation Commission, and the Virginia Railway Express Operations Board.

We evaluated the governance structure currently in place against best practices as defined by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Enterprise Risk Management – Integrated Framework. We offer our observations regarding the Virginia Railway Express governance in relation to best practices in Section 3 of the report, with Section 4 summarizing key points of consideration for the Governor, General Assembly and those charged with governance over VRE moving forward.

AUDITOR OF PUBLIC ACCOUNTS

JBS/clj



September 17, 2013

Martha Mavredes  
Auditor of Public Accounts  
PO Box 1295  
Richmond, VA 23218

Dear Ms. Mavredes:

Thank you for the opportunity to comment on the Audit Report titled "Review of the Governance Structure over the Virginia Railway Express." Governor McDonnell requested the audit last fall. As the owners of the VRE service, the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission welcome the opportunity to consider recommendations the report makes.

The Audit Report can be a valuable resource for helping improve the governance and management of the commuter rail service and to build on VRE's tremendous success as we look to expand its service and improve its efficiency. On Friday, the VRE Operations Board Chairman will charge the VRE Audit Committee with reviewing the recommendations and identifying how best to implement them.

To provide better context for that review, we are providing updated information on three areas raised in your report. Your discussion is based on information as of the fieldwork that was completed earlier this year.

- The search for the new VRE Chief Executive Officer--- completed a year ago --- relied on a detailed position description. During that search the VRE Operations Board used best practices to clearly define the attributes they were seeking with the executive search firm. The detailed position description is enclosed.
- Based on ongoing reviews since coming on board in September 2012, the VRE Chief Executive has realigned staff to ensure optimum internal controls and oversight of projects and functions. The revised organization charts from March 2013 and more recently in September 2013 are enclosed.
- As VRE moves to complete the targets established under its current strategic plan, the VRE Operations Board initiated the development of a strategic plan update in July 2013. The strategic plan developed in 2004 and revisited in 2011 contains many initiatives that are still relevant. The on-going fleet replacement program that was first identified in the 2004 plan. Its ongoing implementation is a primary reason over 95% of our trains arrived on time over the last year.



As the Report notes, the VRE is not an independent entity. It is a commuter rail service owned by the Northern Virginia Transportation Commission and the Potomac Rappahannock Transportation Commission. This is key element to keep in mind when considering suggestions that VRE be treated as though it were a separate entity. The issue of making VRE a separate entity has been discussed before and may in the future should the Operations Board or Commissions see the value in having that discussion.

The current structure has produced one of the most efficient commuter rail services in the country. VRE consistently achieves very high customer satisfaction ratings. At the heart of this successful service is the VRE Operations Board members' responsiveness to and accountability to the users and funders of the VRE service. Our riders pay for over half the cost of the operation. The jurisdictions commit to pay the remainder of the service subsidy as well as fulfilling the commitment to fund long-term debt obligations. The fact that the VRE Operations Board members are members of one of the two Commissions strengthens the regional support of the service and demonstrates one of the most collaborative regional endeavors in the Commonwealth.

Thank you for your work to help enhance our management of this valuable service to northern Virginia region. We look forward to continuing to work with you.

Sincerely,



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Jeff McKay  
Chairman  
Northern Virginia  
Transportation Commission  
2300 Wilson Blvd. #620  
Arlington, VA 22201  
(703) 524-3322



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Michael May  
Chairman  
Potomac and Rappahannock  
Transportation Commission  
14700 Potomac Mills Road  
Woodbridge, VA 22192  
(703) 580-6121



# COMMONWEALTH of VIRGINIA

THELMA D. DRAKE  
Director

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION  
600 EAST MAIN STREET, SUITE 2102  
RICHMOND, VA 23219-2416

(804) 786-4440  
FAX (804) 225-3752  
Virginia Relay Center  
800-828-1120 (TDD)

September 9, 2013

Martha S. Mavredes, CPA  
Auditor of Public Accounts  
James Monroe Building  
101 North 14th Street 8th Floor  
P.O. Box 1295  
Richmond, VA 23219

Dear Ms. Mavredes:

Please be advised that the Department of Rail and Public Transportation (DRPT) concurs with the conclusions of the Auditor of Public Accounts contained within the report of the review of the Virginia Railway Express (VRE). DRPT agrees that it would be an improvement in the governance and structure of VRE if it was to become a legal entity under the law(s) of the Commonwealth. The current process, as noted in the review, is very complex and does not provide VRE with the elements of control needed to contract, apply for state and federal funding, hire staff, assume responsibility for audits, and other aspects of normal operations. The current model of VRE being a joint venture of the two commissions, Northern Virginia Transportation Commission (NVTC) and the Potomac and Rappahannock Transportation Commission (PRTC), may have been a good approach in the development of VRE, but it appears to be an outdated model as VRE continues to operate over 20 years later.

Regardless as to if VRE becomes a legal entity; DRPT believes that changes need to occur at VRE in the near future:

1. DRPT feels that a new board and governance structure that recognizes the contribution of funding partners with a weighted vote is important. It is the responsibility of the board and the two owning commissions to ensure that necessary changes are made to the VRE master agreement to reflect this change prior to July 1, 2014, as required by HB 2152. To date, efforts to update the master agreement have not begun. (However the Master Agreement is structured to self correct to comply with law if the commissions or VRE board fail to amend the agreement.)
2. In a similar movement to that of the Washington Metropolitan Area Transit Authority's enhancement of its board member qualifications and expectations, DRPT continues to support that VRE board membership should be reviewed with the goal of not restricting membership to local elected officials and consider requiring certain competencies and

*The Smartest Distance Between Two Points*

*[www.drpt.virginia.gov](http://www.drpt.virginia.gov)*



requirements of a board member. There are many people in the local communities with expertise that could contribute to the oversight and guidance of VRE.

3. DRPT continues to support the need for the increased oversight and monitoring activities including additional auditing functions either in the form of an internal audit department or contracting for a performance audit of the organization's operations.
4. DRPT would like for the report to recognize that VRE trains and Virginia's Intercity Passenger Rail services share the same tracks, and must contract with the same class I freight railroads that own the tracks. It is important that VRE be required to coordinate with DRPT as to agreements, contracts, expansions, and rail improvements as a better way to coexist in providing services to Virginians and to insure that we are working together and in coordination with one another.
5. We would also request that the allocation of federal funds controlled by the state and provided to VRE be recognized in the chart "State Allocated – Assistance". This state allocation totaled \$9.3 million for FY 2014, and this change to the chart would further demonstrate the state's significant level of contribution to VRE. Please see the attached bar graph and date.

Thank you for this opportunity to comment on the APA report concerning VRE.

Sincerely,



Thelma Drake

## RESPONSE TO THE RESPONSES

The Northern Virginia Transportation Commission, the Potomac and Rappahannock Transportation Commission, and Virginia Railway Express; as well as the Department of Rail and Public Transportation included one or more attachments as a part of their response to the report. These attachments are not included here in, but may be obtained from the following contacts.

### Northern Virginia Transportation Commission

Rhonda Gilchrist  
Commission Secretary  
[Rhonda@nvtdc.org](mailto:Rhonda@nvtdc.org)

### Potomac and Rappahannock Transportation Commission

Gina Altis  
Executive Assistant  
[galtis@omniride.com](mailto:galtis@omniride.com)

### Virginia Railway Express

Lezlie Lamb  
Executive Administrative Assistant  
[llamb@vre.org](mailto:llamb@vre.org)

### Department of Rail and Public Transportation

Steve Pittard  
Chief Financial Officer  
[Steve.Pittard@drpt.virginia.gov](mailto:Steve.Pittard@drpt.virginia.gov)

# **NORTHERN VIRGINIA TRANSPORTATION COMMISSION**

As of June 30, 2012

Jay Fisette – Arlington County  
Chairman

Jeffrey McKay – Fairfax County  
Vice-Chairman

David Snyder – City of Falls Church  
Secretary/Treasurer

Sharon Bulova  
Fairfax County

Kelly Burk  
Loudon County

Barbara Comstock  
State Delegate

John Cook  
Fairfax County

Adam Ebbin  
State Delegate

William Euille  
City of Alexandria

John Foust  
Fairfax County

Jeffrey Greenfield  
City of Fairfax

Mark Herring  
State Senator

Catherine Hudgins  
Fairfax County

Mary Hynes  
Arlington County

Joseph May  
State Delegate

Thomas Rust  
State Delegate

Paul Smedberg  
City of Alexandria

Mary Margaret Whipple  
State Senator

Christopher Zimmerman  
Arlington County

James Dyke  
Commonwealth Transportation Board Chairman Designee

Richard Taube  
Executive Director

# **POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION**

As of June 30, 2012

Michael May  
Prince William County  
Chairman

Francis Jones  
City of Manassas Park  
Vice-Chairman

Frederic Howe  
City of Fredericksburg  
Treasurer

Susan Stimpson  
Stafford County  
Secretary

Richard Anderson  
State Delegate

Maureen Caddigan  
Prince William County

Wally Covington  
Prince William County

John Jenkins  
Prince William Count

Paul Milde  
Stafford County

Jackson Miller  
State Delegate

Martin Nohe  
Prince William County

Benjamin Pitts  
Spotsylvania County

Frank Principi  
Prince William County

Linda Puller  
State Senator

Gary Skinner  
Spotsylvania County

Johnathan Way  
City of Manassas

Thelma Drake  
Director, DRPT  
Commonwealth Transportation Board Chairman Designee

Alfred Harf  
Executive Director

## **VRE OPERATIONS BOARD**

As of June 30, 2012

Wally Covington (PRTC)  
Prince William County  
Chairman

Paul Smedberg (NVTC)  
City of Alexandria  
Vice-Chairman

John Cook (NVTC)  
Fairfax County  
Treasurer

Susan Stimpson (PRTC)  
Stafford County  
Secretary

Sharon Bulova (NVTC)  
Fairfax County

Maureen Caddigan (PRTC)  
Prince William County

Frederic Howe (PRTC)  
City of Fredericksburg

John Jenkins (PRTC)  
Prince William County

Paul Milde (PRTC)  
Stafford County

Suhas Naddoni (PRTC)  
City of Manassas Park

Thelma Drake  
(Director, DPRT)

Gary Skinner (PRTC)  
Spotsylvania County

Jonathan Way (PRTC)  
City of Manassas

Christopher Zimmerman (NVTC)  
Arlington County

Douglas Allen  
Chief Executive Officer

**DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**

As of June 30, 2012

Thelma Drake  
Director

Steve Pittard  
Chief Financial Officer

Kevin Page  
Chief Operating Officer

### Interviewees

#### *Northern Virginia Transportation Commission*

Jay Fisette – NVTC Chairman - Arlington County  
Chris Zimmerman – Arlington County\*  
Sharon Bulova – Fairfax County\*  
Richard Taube – NVTC Executive Director

#### *Potomac Rappahannock Transportation Commission*

Mike May – PRTC Chairman - Prince William County  
Frederic Howe – City of Fredericksburg\*  
Gary Skinner – Spotsylvania County\*  
Susan Stimpson – Stafford County\*  
Wally Covington – Prince William County\*  
Al Harf – PRTC Executive Director

#### *Virginia Railway Express*

Doug Allen – Current CEO  
Rich Dalton – Director of Rail Equipment and Services (Former Acting CEO)  
Dale Zehner – Former CEO

#### *Others*

Kevin Page – Chief Operating Officer, Department of Rail and Public Transportation and ex-officio member of the VRE Operations Board  
Steve MacIsaac – Arlington County Attorney; NVTC, PRTC, and VRE Counsel

*\*Denotes commission member who also serves on the VRE Operations Board*

### Supporting Documentation

#### *Northern Virginia Transportation Commission*

Financial Policies and Procedures Manual  
NVTC Bylaws  
NVTC 2012 Handbook

#### *Potomac Rappahannock Transportation Commission*

PRTC Bylaws  
PRTC Policies and Procedures Manual

#### *Virginia Railway Express*

VRE Operations Board Bylaws  
VRE Delegation Authorization  
VRE Master Agreement 1989  
VRE Master Agreement 2009

### *Virginia Railway Express, continued*

VRE Master Agreement 2011  
VRE Annual Financial Report 2011 and 2012  
Chronology of the Virginia Railway Express  
VRE Strategic Plan 2004 – 2025  
VRE Performance Measures  
VRE Board Meeting Agendas and Minutes

### **Code of Virginia:**

#### *§ 2.2-604. Performance of duties assigned to an agency.*

The chief executive officer shall be responsible for any duty or task imposed upon his agency.

The chief executive officer may delegate or assign to any officer or employee of his agency any tasks required to be performed by him or the agency and, in the case of an agency with a supervisory board, such board may delegate or assign the tasks. Except as otherwise provided by law, the chief executive officer may also delegate to any officer or employee of any state or quasi-state agency nondiscretionary duties conferred or imposed upon the chief executive officer or his agency by law where the delegation of duties is necessary to achieve efficiency and economy in the administration of government. The chief executive officer or supervisory board delegating or assigning tasks shall remain responsible for the performance of such tasks.

Any delegation pursuant to this section shall, where appropriate, be accompanied by written guidelines for the exercise of the tasks delegated. Where appropriate, the guidelines shall require that agency heads receive summaries of actions taken. Such delegation shall not relieve the chief executive officer or supervisory board of the responsibility to ensure faithful performance of the duties and tasks.

(1988, c. 273, § 2.1-20.01:2; 2001, c. 844; 2005, c. 839.)

#### *§ 2.2-2100. Classification of executive branch boards, commissions and councils.*

A. Effective July 1, 1986, every collegial body established by law or executive order within the executive branch of state government shall be classified according to its level of authority as follows:

"Advisory" - A board, commission or council shall be classified as advisory when its purpose is to provide advice and comment to an executive branch agency or office. An advisory board, commission or council serves as a formal liaison between the agency or office and the public to ensure that the agency or office understands public concerns and that the activities of the agency or office are communicated to the public. An advisory board, commission or council does not serve a regulatory or rule-making purpose. It may participate in the development of public policy by providing comment and advice.

"Policy" - A board, commission or council shall be classified as policy if it is specifically charged by statute to promulgate public policies or regulations. It may also be charged



with adjudicating violations of those policies or regulations. Specific functions of the board, commission or council may include, but are not limited to; rate setting, distributing federal funds, and adjudicating regulatory or statutory violations, but each power shall be enumerated by law. Policy boards, commissions or councils are not responsible for supervising agencies or employing personnel. They may review and comment on agency budget requests.

"Supervisory" - A board, commission, or council shall be classified as supervisory if it is responsible for agency operations including approval of requests for appropriations. A supervisory board, commission, or council appoints the agency director and ensures that the agency director complies with all board and statutory directives. The agency director is subordinate to the board. Notwithstanding the foregoing, the Board of Education shall be considered a supervisory board.

- B. Each executive branch board, commission or council shall be assigned only one of the above classifications. The classification for boards and councils that are created by law shall be designated by the enabling legislation. The classification for commissions that are created by executive order shall be designated by the executive order.

(1985, c. 419, § 9-6.25; 2001, c. 844.)

*§ 15.2-4505. District a body corporate; name and style.*

Each transportation district created pursuant to this chapter, or pursuant to an act of the General Assembly, is hereby created as a body corporate and politic under the name of, and to be known by, the name of the district with the word "commission" appended.

*§ 15.2-4506. Creation of commission to control corporation.*

In and for each transportation district a commission is hereby created to manage and control the functions, affairs and property of the corporation and to exercise all of the rights, powers and authority and perform all of the duties conferred or imposed upon the corporation.

(1964, c. 631, § 15.1-1347; 1997, c. 587.)

*§ 15.2-4508. Officers of commission.*

Within thirty days after the appointment of the original commission members, the commission shall meet on the call of any member and shall elect one of its members as chairman and another as vice-chairman, each to serve for a term of one year or until his successor is elected and qualified. The commission shall employ a secretary and treasurer, who may or may not be a member of the commission, and if not a commission member, fix his compensation and duties. All officers shall be eligible for reelection. Each commission member, before entering on the performance of his public duties, shall take and subscribe the oath or affirmation specified in Article II, Section 7 of the Constitution of Virginia. Such oath may be administered by any person authorized to administer oaths under § 49-4.

(1964, c. 631, § 15.1-1349; 1971, Ex. Sess., c. 1; 1987, c. 153; 1997, c. 587.)

*§ 15.2-4509. Bonds of members.*

Each commission member shall, before entering upon the discharge of his duties under this chapter, give bond payable to the Commonwealth in a form approved by the Attorney General, in such penalty as fixed from time to time by the Governor, with some surety or

guaranty company authorized to do business in Virginia and approved by the Governor, as security, conditioned upon the faithful discharge of his duties. The premium of such bonds shall be paid by the commission and the bonds shall be filed with and preserved by the Department of the Treasury's Division of Risk Management.  
(1964, c. 631, § 15.1-1350; 1997, c. 587; 2002, c. 32.)

*§ 15.2-4511. Meetings of commission.*

Regular meetings of the commission shall be held at least once every month at such time and place as the commission shall from time to time prescribe. Special meetings of the commission shall be held upon mailed notice, or actual notice otherwise given, to each commission member upon call of the chairman or any two commission members, at such time and in such place within the district as such notice may specify, or at such other time and place with or without notice as all commission members may expressly approve. All regular and special meetings of the commission shall be open to the public, but the public shall not be entitled to any notice other than provided herein. Unless a meeting is called for the purpose of a public hearing, members of the public shall have no right to be heard or otherwise participate in the proceedings of the meeting, except to the extent the chairman may in specific instances grant. All commission records shall be public records.  
(1964, c. 631, § 15.1-1352; 1997, c. 587.)

*§ 15.2-4512. Quorum and action by commission.*

A majority of the commission, which majority shall include at least one commissioner from a majority of the component governments, shall constitute a quorum. Members of the commission who are members of the General Assembly shall not be counted in determining a quorum while the General Assembly is in session. The Chairman of the Commonwealth Transportation Board or his designee may be included for the purposes of constituting a quorum. The presence of a quorum and a vote of the majority of the members necessary to constitute a quorum of all the members appointed to the commission, including an affirmative vote from a majority of the jurisdictions represented, shall be necessary to take any action. Notwithstanding the provisions of § 2.2-3708, members of the General Assembly may participate in the meetings of the commission through electronic communications while the General Assembly is in session.  
(1964, c. 631, § 15.1-1353; 1966, c. 419; 1975, c. 7; 1997, c. 587; 2004, c. 1000.)

*§ 15.2-4516. Regulation of fares, schedules, franchising agreements and routing of transit facilities.*

The commission may exercise exclusive control, notwithstanding any provision of law to the contrary, of matters of regulation of fares, schedules, franchising agreements and routing of transit facilities within the boundaries of its transportation district; however, the provisions of § 5.1-7 of the Code of Virginia shall be applicable to airport commissions.  
(1972, c. 832, § 15.1-1357.1; 1973, c. 392; 1997, c. 587.)

*§ 15.2-4518. Additional powers.*

Without limiting or restricting the general powers created by this chapter, the commission may:

## Appendix A: Interviewees and Supporting Documentation

1. Adopt and have a common seal and alter the seal at pleasure;
2. Sue and be sued;
3. Make regulations for the conduct of its business;
4. Make and enter into all contracts or agreements, as the commission may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted under this chapter;
5. Apply for and accept loans and grants of money or materials or property at any time from the United States of America or the Commonwealth or any agency or instrumentality thereof, for itself or as an agent on behalf of the component governments or any one or more of them; and in connection therewith, purchase or lease as lessor or lessee, any transit facilities required under the terms of any such grant made to enable the commission to exercise its powers under § 15.2-4515 B 5;
6. In the name of the commission, and on its behalf, acquire, hold and dispose of its contract or other revenues;
7. Exercise any power usually possessed by private corporations, including the right to expend, solely from funds provided under this chapter, such funds as may be considered by the commission to be advisable or necessary in the performance of its duties and functions;
8. Employ engineers, attorneys, other professional experts and consultants, and general and clerical employees deemed necessary, and prescribe their powers and duties and fix their compensation;
9. Do anything authorized by this chapter under, through or by its own officers, agents and employees, or by contracts with any persons;
10. Execute instruments and do anything necessary, convenient or desirable for the purposes of the commission or to carry out the powers expressly given in this chapter;
11. Institute and prosecute any eminent domain proceedings to acquire any property authorized to be acquired under this title in accordance with the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, and subject to the approval of the State Corporation Commission pursuant to § 25.1-102;
12. Invest in if required as a condition to obtaining insurance, participate in, or purchase insurance provided by, foreign insurance companies that insure railroad operations, provided this power is available only to those commissions that provide rail services;
13. Notwithstanding the provisions of § 8.01-195.3, contract to indemnify, and to obtain liability insurance to cover such indemnity, any person who is liable, or who may be subjected to liability, regardless of the character of the liability, as a result of the exercise by a commission of any of the powers conferred by this chapter. No obligation of a commission to indemnify any such person shall exceed the combined maximum limits of all liability policies, as defined in § 15.2-4526 C, maintained by the commission; and
14. Notwithstanding any other provision of law to the contrary, regulate traffic signals and other vehicle control devices within its jurisdiction, through the use of computers and other electronic communication and control devices, so as to effect the orderly flow of traffic and to improve transportation services within its jurisdiction; however, an agreement concerning the operation of traffic control devices acceptable to all parties shall be entered into between the commission and the Virginia Department of

Transportation, and all the counties and cities within the transportation district prior to the commencement of such regulation.

(1964, c. 631, § 15.1-1358; 1966, c. 419; 1970, c. 449; 1974, c. 529, § 15.1-1357.3; 1988, c. 834; 1997, c. 587; 2003, c. 940.)

*§ 15.2-4519. Authority to issue bonds and other obligations; terms and conditions of bonds; enforcement; exemption from taxation; legal investments.*

- A. 1. A transportation district may issue bonds or other interest-bearing obligations, as provided in this chapter, for any of its purposes and pay the principal and interest thereon from any of its funds, including, but not limited to, any moneys paid to or otherwise received by the district pursuant to any law heretofore or hereafter enacted or any contract or agreement or any grant, loan, or contribution authorized by this chapter. For the purposes of this chapter, bonds include bonds, notes, and other interest-bearing obligations, including notes issued in anticipation of the sale and issuance of bonds.
2. Neither the members of a transportation district nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of a district (and such bonds and obligations shall so state on their face) shall not be a debt of the Commonwealth or any political subdivision thereof and only the district shall be liable thereon. The bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under this section.
- B. 1. Bonds of a transportation district shall be authorized by resolution, may be issued in one or more series, shall be dated, shall mature at such times not exceeding forty years from their dates, shall bear interest at rates determined by the commission, and may be made redeemable before maturity, at the option of the commission at such price or prices and under such terms as the commission fixes prior to issuing the bonds. The commission shall determine the form of the bonds, including any interest coupons to be attached and the manner of execution of the bonds, and shall fix the denominations of the bonds and the places of payment of principal and interest, which may be at any bank or trust company within or outside the Commonwealth. If any officer whose signature or facsimile signature appears on any bonds or coupons ceases to be such officer before delivery of such bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be negotiable instruments under the laws of the Commonwealth. The bonds may be issued in coupon or registered form or both, as the commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The transportation district may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the district. A transportation district is authorized to enter into indentures or agreements with respect to all such matters and such indentures or agreements may contain such other

- provisions as the commission may deem reasonable and proper for the security of the bondholders. The resolution may provide that the bonds shall be payable from and secured by all or any part of the revenues, moneys or funds of the district as specified therein. Such pledge shall be valid and binding from the time the pledge is made and such revenues, moneys and funds so pledged and thereafter received by the district shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except in the records of the district. All expenses incurred in carrying out the provisions of such indentures or agreements may be treated as a purpose of the transportation district. A transportation district may issue refunding bonds for the purpose of redeeming or retiring any bonds before or at maturity, including the payment of any premium, accrued interest and costs or expenses thereof.
2. Prior to the preparation of definitive bonds a transportation district may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. A transportation district may also provide for the replacement of any bonds which have been mutilated, destroyed or lost.
  3. Bonds may be issued pursuant to this article without obtaining the consent of any commission, board, bureau or agency of the Commonwealth or of any governmental subdivision, and without any referendum, other proceedings or the happening of other conditions except for those proceedings or conditions which are specifically required by this article.
- C. Any holder of bonds, notes, certificates or other evidence of borrowing issued under this article or of any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement, except to the extent of the rights herein given may be restricted by such trust indenture or agreement, may, either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this article or under such trust indenture or agreement or the resolution authorizing the issuance of such bonds, notes or certificates, and may enforce and compel the performance of all duties required by this article or by such trust indenture or agreement or resolution to be performed by the transportation district or by any officer or agent thereof.
- D. The exercise of the powers granted by this article shall be in all respects for the benefit of the inhabitants of the Commonwealth, for the promotion of their safety, health, welfare, convenience and prosperity, and any facility or service which a transportation district is authorized to provide will constitute the performance of an essential governmental function. The bonds of a district are declared to be issued for an essential public and governmental purpose and their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any governmental subdivision thereof.
- E. Bonds issued by a transportation district under this article are securities in which all public officers and public bodies of the Commonwealth and its governmental subdivisions, all insurance companies, trust companies, banks, banking associations,

investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are securities which may properly and legally be deposited with and received by any state or local officer or any agency or governmental subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

(1968, c. 551, § 15.1-1358.2; 1972, c. 791; 1997, c. 587.)

*§ 15.2-4520. Judicial determination of validity of bonds.*

The provisions of §§ 15.2-2650 to 15.2-2658 apply to all suits, actions and proceedings of whatever nature involving the validity of bonds issued by a transportation district under the provisions of this article.

(1968, c. 551, § 15.1-1358.3; 1997, c. 587.)

## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
<b>Policy Formulation</b>					
1. Did the Board help to formulate the entity's mission and/or vision statement(s)?			X		The Operations Board helps to formulate the plan, while the Commissions have final approval on the mission and/or vision statements.
2. Does the Board have policies regarding review and approval of the entity's operating plans?	X	X	X		VRE has an evolving, high level 6 year operating and capital plan, as required by the VRE Master Agreement, which is reviewed by the Operations Board and recommended to the Commissions for approval as part of the annual budget process.
3. Does the Board have policies regarding review and approval of the entity's budget?	X	X	X		The Master Agreement has established the budget process which includes going outside the normal oversight process to the jurisdictions. The VRE Operations Board sets annual budget guidelines and invites the Chief Administrative Officers of VRE's jurisdictions to review the proposed budget before it is acted upon and forwarded to both Commissions for final approval. The Operations Board reviews all comments by the jurisdictions and prepares a final budget for the Commission's approval.
4. Has the Board formulated policies regarding its annual budget formulation?	X	X	X		This is defined in the Master Agreement.
5. Has the Board formulated policies regarding the selection of a CEO?				X	VRE just went through a CEO change for the first time in 12 years and the selection process was conducted on an ad hoc basis. During the most recent search, VRE used an outside executive search company to find the CEO.
6. Has the Board defined the CEO'S responsibilities?				X	The general powers of the CEO are listed in the Master Agreement. CEO powers and responsibilities have not been revisited for the current environment surrounding VRE or the recent change in leadership. VRE did have a CEO job description used for recruitment developed by the Executive Committee.



## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
7. Has the Board defined the CEO's performance measures?				X	There are no defined performance measures specific to the CEO; there is a job description outlining general responsibilities along with operational objectives of the organization. No evidence could be found that the CEO is held to the job description.
8. Has the Board defined the CEO's performance appraisal procedures?				X	The Operations Board indicated they appraise the CEO's performance annually; however, we were not provided evidence of specific procedures or evaluation criteria.
9. Has the Board formulated policies regarding financial controls?	X	X		X	NVTC has a Financial Policies and Procedure Manual which detail procedures for state grant revenue for VRE. PRTC has Grants Management Guidelines for the handling of VRE's federal grants. VRE also has an internal financial policy regarding their policies and procedures, but this was not presented to the Board. VRE is currently developing Financial and Debt Management Policies, for Board approval.
10. Has the Board formulated policies regarding adherence to state, federal and other laws and contracts?	X	X		X	Each year the Commission Boards authorize the Executive Director to execute agreements signifying acceptance of all federal and state grant compliance requirements. NVTC and PRTC have policies regarding state and federal grants. There is evidence of VRE state and federal procedures; however, these are not formalized by VRE's Operations Board.
11. Has the Board formulated policies regarding financial reporting controls?				X	VRE relies on an independent audit to determine any needed policy changes. The auditor does review VRE's Internal Controls over Financial Reporting, but it is management's responsibility not the auditors to ensure a proper internal control environment. All three entities have financial policies and procedures; however, the Boards are not presented with these policies.

## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
12. Has the Board formulated policies regarding financial auditing?	X	X	X		<p>The VRE Master Agreement requires the Operations Board to conduct an annual financial audit. In addition, VRE financial transactions are allocated to the Commissions and included in their annual audited financial reports.</p> <p>Note: The audits provided to VRE are financial statement audits as opposed to performance audits as defined by generally accepted government auditing standards. The amount of coverage over internal controls provided by a financial statement audit is limited. Performance audits provide broader coverage over internal controls. Commission and VRE Operations Board members interviewed indicated reliance on the financial statement audit to catch potential policy issues when this is not the intent of a financial statement audit.</p>
13. Has the Board formulated policies regarding board member selection?	X	X			The Master Agreement states the criteria for VRE Operations Board member selection. The Commissions appoint VRE Operations Board members on the recommendation of the member jurisdiction.
14. Has the Board formulated policies regarding board member expectations?				X	As with most boards with legislatively defined membership, neither the Operations Board nor the Commissions conduct formal performance appraisals of its members as they have limited control over their selection. However, this occurs in effect at the jurisdictional and Commissions level during their respective annual processes of appointing members to the Commissions and the Operations Board.

## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
15. Has the Board formulated policies regarding board committee formation?	X	X			The Operations Board is a joint sub-committee of the commissions and its formation is detailed in the Master Agreement. The Operations Board has a Nominating Committee, Executive Committee, and a recently formed Capital Committee. According to the Operations Board's by-laws they may request the Commissions to establish additional committees for discharging the responsibilities of the Commissions. For instance the Capital Committee was approved by the Commissions as an information item in VRE Board Minutes during the December 2012 meetings.
16. Does the Board have a majority of independent members outside of the entity?	X	X	X		All of the Board members are outside of the entity as they receive their membership as a result of being an elected official for a member jurisdiction or to the General Assembly. They do not participate in the day-to-day operations of VRE. However they all represent funding sources for VRE who could not exist without.
17. Has the Board formulated policies regarding board committee evaluation?				X	The Operations Board draws from a limited membership pool. We do not view this as a major risk.
18. Has the Board formulated policies regarding board evaluation?				X	The Operations Board has limited to no control over its membership as it draws from the limited potential membership pool of each Commission's member jurisdictions. We do not view this as a major risk.
<b>Decision Making</b>					
1. Did the Board approve the entity's mission and/or vision statements?	X	X	X		The Operations Board helps to formulate VRE's mission and/or vision statements and then recommends them to the Commissions. It is the responsibility of the Commissions to approve. The strategic plan, which was last formally updated in May 2004, is outmoded and needs to be updated.

## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
2. Does the Board approve the entity's annual operating plan?	X	X			A six year transit development plan and six year financial plan is completed on an annual basis as part of the budget process. The Operations Board prepares the operating plan along with the budget and recommends approval by both Commissions.
3. Does the Board approve the entity's operating and capital budgets?	X	X			Per the Master Agreement, the annual operating and capital budgets are prepared by the Operations Board, in consultation with its participating and contributing jurisdictions. The Operations Board then recommends the operating and capital budgets be approved by the Commissions.
4. Does the Board select the CEO?	X	X	X		Per the Master Agreement, the Operations Board recommends the selection of the VRE CEO to the Commissions who approve the VRE CEO selection.
5. Does the Board determine the CEO's compensation and changes to compensation?	X	X	X		<p>The Operations Board develops and recommends any changes to VRE CEO compensation to the Commissions. The Commissions approve these changes either through the budget process or through a budget amendment.</p> <p>However, as there is no formal structure to the CEO's annual evaluation, there is no supporting documentation for the Commissions to review when increasing CEO compensation.</p>
6. Does the Board approve management's policies regarding legal, regulatory, or other external issues?	X	X			Both the Federal Transportation Administration and Virginia DRPT have master agreements with the Commissions addressing regulatory issues with which they must comply. The Commissions in turn have policies regarding those issues; however, VRE is not a legal entity and has not developed policies for the Operations Board to approve, rather they rely on the policies and procedures developed by the Commissions.

## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
7. Does the Board select the independent auditor for the entity?	X	X			As VRE is not a legal entity, they are not able to contract with an independent auditor. Any independent auditor must be selected by one of the parent Commissions.
8. Does the Board approve the financial statements?	X	X	X		The VRE audited financial statements are accepted by the VRE Operations Board and forwarded to the Commissions for their review and acceptance. The Commissions adopt resolutions authorizing distribution of the audited financial statements.
9. Does the Board approve and review the entity's independent annual audit report?	X	X	X		All three Boards review any management letters and reports from the auditors.
10. Does the Board approve financial investments and other financing sources?	X	X	X		<p>The Commissions and Operations Board are subject to the Investment of Public Funds Act set out in the <u>Code of Virginia</u>. By agreement between the Commissions, all VRE related bonds are issued by NVTC, on the recommendation of the VRE Operations Board and with the approval of both Commissions. The participating and contributing jurisdictions must also approve bond issues and other debt instruments supported by the VRE Master Agreement annual subsidy.</p> <p>VRE receives a small amount of interest income, from the LGIP, an insurance trust and money market funds. The Operations Board has approved VRE's Investment Policy in 2004 and a revision in 2007. The Commissions then adopted this as an information item in the VRE Board Minutes.</p>
11. Does the Board help seek revenue sources for the entity?	X	X	X		Most Board members are local or state elected officials with access to jurisdictions and state officials providing most funding.

## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
12. Does the Board approval all by-laws and amendments to the board policies?	X	X	X		The Commissions pass all amendments to the Master Agreement and their own by-laws. The Operations Board approves its by-laws and all policy amendments
13. Does the Board follow policies regarding member selection?	X	X	X		Commission membership is defined by the <u>Code of Virginia</u> . Operations Board membership is established in the Master Agreement.
14. Does the Board follow policies regarding committee appointments?	X	X		X	As a sub-committee of the Commissions, Operations Board appointments are established in the Master Agreement. There are no policies regarding appointment to any VRE sub-committees.
15. Does the Board have a role in strategic planning for the entity?			X		The Operations Board helps to formulate the plan and then recommend its approval to the Commissions. The Commissions approve the strategic plan. The last such formulation and approval was in 2004.
16. Does the Board approve the entity's strategic plan?	X	X			The Operations Board helps to formulate the plan and then recommend its approval to the Commissions. The Commissions approve the strategic plan. The last such formulation and approval was in 2004.
17. Does the strategic plan support the entity's mission/vision?				X	The strategic plan is almost 10 years old and has been outmoded due to growth in ridership and maximization of available resources.

## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
<b>Oversight</b>					
1. Do Board members have the knowledge and technical expertise to carry out oversight roles?	X	X	X		While not necessarily experts in commuter rail systems, each member has knowledge of their locality's needs regarding transportation as well as the availability of resources from their locality.
2. Does the Board ensure compliance with policies through periodic appraisal or audit of operations?				X	VRE management does have financial policies regarding reconciliations, cash management, budget development, and federal and state grant bill procedures; however, the Boards rely on financial statement audits and the Federal Transportation Administration's triennial review to do this. The financial statement audit has a limited scope of giving reasonable assurance that the statement amounts are presented fairly. The Commissions have not had a performance audit of their operations or of VRE's operations, which can evaluate the entire operation's internal controls.
3. Does the Board review and approve correction action taken by management when policies are not followed?	X	X	X		The contracts for auditing are in the names of one of the Commissions, whichever commission requested the audit will respond to its findings. Neither VRE nor the Operations Board can respond as VRE is not a legal entity. However, the VRE Operations Board acts within the scope of its delegated powers or as approved by the Commissions when responding to corrective actions.
4. Does the Board review and appraise CEO performance?				X	The Master Agreement delineates that the CEO reports directly to and acts at the direction of the Operations Board. However, there is no formal process of review or set expectations against which to evaluate the CEO and therefore evidence of such a review. Currently, the Commissions observe the results of a review when amending the CEO's contract.



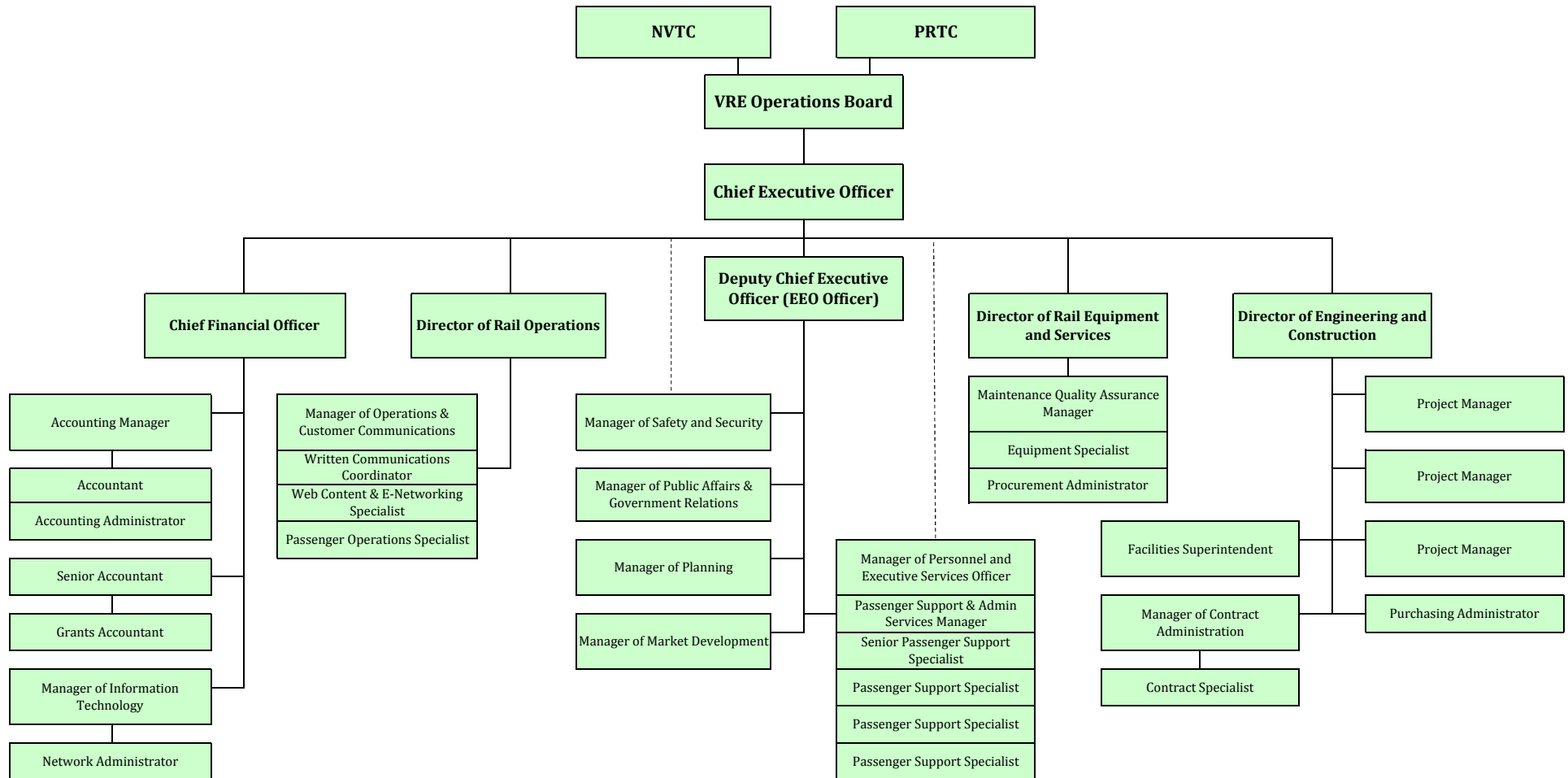
## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
5. Does the Board monitor revenues, expenditures, and cash to ensure compliance with financial policies?	X	X	X		An Operating Budget Report of VRE activity is provided each month which compares actual to budgeted revenue and expenses and compares actual results to percentage goals. All three Boards act on the results of independent financial audits each year.
6. Does the Board appraise its own performance periodically?				X	As with most boards with elected officials as members, neither the Operations Board nor the Commissions conduct formal performance appraisals of its members. However, the Commissions and Operational Board believe this occurs in effect at the jurisdictional and Commissions level during their respective annual processes of appointing members to the Commissions and the Operations Board.
7. Does the Board have a way to ensure clear communication between stakeholders and itself?	X	X	X		Through the annual budget process, the entire VRE commuter service program is examined by the jurisdictions, the VRE Operations Board, and the commissions. In addition, the VRE Operations Board and commission members provide a direct line of communication back to the stakeholder jurisdictions and the ridership. Further, NVTC and PRTC conduct annual public hearings encompassing VRE matters and issue multiple media releases. They routinely provide all relevant documents to their respective member jurisdictions and state and federal funding agencies. In addition the Commission and VRE Operations Board meetings are open to the public with time for public comments on the meeting agenda.

## Appendix B: Governance Best Practice Checklist

	Yes			No	Comments
	NVTC	PRTC	VRE Operations Board		
8. Does the Board require regular communications between itself and the CEO to ensure that the Board is kept up to date on the status of operations?	X	X	X		The VRE CEO gives a monthly report at each Operations Board and Commission meeting, as required by the Master Agreement. The two Commissions meet on the same night, which is two weeks after the VRE Operations Board Meeting, and the CEO presents his report to each board that night.
9. Does the Board require the entity to identify significant risks to the entity's strategy/objectives and how management is responding to those risks?				X	There is no risk assessment presented to the Board. When the budget is prepared various budget scenarios are presented, such as how funding will be addressed if fares increase, or if the price of gas goes up. The budget scenarios only address potential funding issues and not look further into other areas such as expenses, or other operational concerns.
10. Does the Board provide oversight to ensure the entity's strategic and operational objectives are being achieved?	X	X	X		The VRE CEO provides a monthly report of progress in achieving existing objectives. The success measures of ridership, on-time performance, and safety are also reviewed. Additionally, the annual ridership survey documents customer satisfaction with VRE's achievement of its objectives, as do monthly on-line forums where the VRE CEO interacts directly with the riders.

The Board of Directors is the legal guardian of an entity responsible to the stakeholders of that entity. Board authority is collective and its responsibilities can be separated into three different categories—policy formulation, decision making and oversight. Policy formulation is the primary tool used to influence an organization. Board policies provide guidelines, a framework for the Board's decision making, and delegate the Board's authority. Decision making is driven by the policies formulated by the Board and are made collectively by the Board members. Decision making involves enforcing those policies that are in place to achieve the entity's mission and goals. The oversight role of the Board ensures that management and the Board are held accountable for fulfilling the mission of the entity. This role involves monitoring and evaluating both management and entity performance and taking corrective action when needed.



**Footnote:** Manager of Safety and Security reports to the CEO in matters related to safety and security.  
Manager of Personnel reports to the CEO in matters related to EEO.